

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 40

PHILLIPS CHEMICAL COMPANY, APPELLANT,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS

FILED MARCH 13, 1959

PROBABLE JURISDICTION NOTED MAY 18, 1959

SUPREME COURT OF THE UNITED STATES

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PHILLIPS CHEMICAL COMPANY, APPELLANT,

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[fol. 1]

**IN THE DISTRICT COURT OF MOORE COUNTY,
TEXAS, 69th JUDICIAL DISTRICT**

No. 6697

MOORE COUNTY, DISTRICT COURT No. 2708-A

PHILLIPS-CHEMICAL COMPANY, Appellant,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT, et al., Appellee.

Transcript from 69th Judicial District Court of
Moore County at , Texas.

Hon. Harry H. itz, Judge Presiding.

E. H. Foster, T. M. Blume & C. Rex Boyd, Attorneys
for Appellant, Box 1751, Amarillo, Texas, P. O. Address.
James W. Witherspoon, Wayne E. Thomas, John D.
Aikin & Earnest L. Langley, Attorneys for Appellee, Box
473, Hereford, Texas, P. O. Address.

No. A-6639

Filed in Supreme Court
of Texas

February 12, 1958

Geo. H. Templin, Clerk
By Jewell Seeliger, Deputy

Filed in Court of Civil
Appeals for Seventh
Supreme Judicial Dis-
trict of Texas

Jan. 31, 1957

Elmo Payne, Clerk

Applied for by T. M. Blume, Attorney for Appellant,
on the 12th day of December, 1956, and delivered to T. M.
Blume on the 8th day of January, 1957.

Hazel Haile, Clerk, District Court, Moore County,
Texas.

[fol. 4]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

No. 2708

PHILLIPS CHEMICAL COMPANY, Plaintiff.

v.

DUMAS INDEPENDENT SCHOOL DISTRICT, Defendant.

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION—
Filed September 1, 1956

To the Honorable Court:

Comes now Phillips Chemical Company, a corporation, hereinafter referred to as Plaintiff, and files this its First Amended Original Petition, amendatory and in lieu of its Original Petition hereinbefore filed, and complaining of Dumas Independent School District, Defendant, hereinafter referred to as School District, and for cause of action against said Defendant says:

First Cause of Action

I.

That at all times material hereto, plaintiff has been and still is a corporation (sic) duly organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of Texas, and a wholly owned subsidiary of Phillips Petroleum Company, a corporation, duly organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of Texas.

II.

That Dumas Independent School District is a body politic and a corporation organized, created and existing under

and by virtue of the laws of the State of Texas, with the power to sue and be sued.

[fol. 5]

III.

Plaintiff says that pursuant to a written lease not for a term of three years or more, dated July 22, 1948, executed by and between the United States of America, hereinafter referred to as the Government, and Phillips Petroleum Company, its predecessor in interest, and on or about August 16, 1948, and as a lessee, it entered into possession of certain real and personal property consisting of the land, buildings, improvements, machinery and appurtenances thereunto belonging, and described in Exhibits "A" and "B" attached to the lease, owned by the Government, and located within the territorial limits of the School District, and generally known and referred to as the Cactus Ordnance Works, for the purpose of operating, using, occupying and conducting thereon, in its private capacity, an ammonia and nitric acid plant for the purpose of manufacturing anhydrous ammonia or fertilizer and for other commercial and experimental purposes; that since August 16, 1948, to the present time, plaintiff says it has been in possession of the property, operating, using, occupying and conducting thereon in its private capacity, an ammonia and nitric acid plant, and manufacturing anhydrous ammonia and nitric acid.

IV.

Plaintiff says that notwithstanding the fact that it is holding property exempt by law from taxation in the hands of the owner thereof, under a lease not for a term of three years or more, the School District, on or about May 1, 1954, and without any lawful right or authority so to do, and with the purpose, intent and design of wilfully, unlawfully and illegally collecting from this plaintiff the sum of \$305,346.73 as ad valorem taxes for the years 1949 through 1954, inclusive, assessed for taxes as [fol. 6] property belonging to Phillips Petroleum Company, and for which it is claimed plaintiff is liable for taxes thereon, the following described property:

"All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

• • • • •

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 78 of this record with the words 'That part of sections . . . ' and ending at page 86 of said record with the words ' . . . of the N.E. corner thereof.'"

• • • • •

[fol. 12]

V.

Plaintiff says that notwithstanding the fact that the Government is the owner of the property, and it is exempt from taxation, and notwithstanding the fact that the plaintiff is holding the property under a lease not for a term of three years or more, and notwithstanding the fact that the leasehold estate of the plaintiff has never, in fact, been assessed for taxes, all of which facts are well known to the School District, the School District has submitted to the plaintiff a tax statement totaling the amount of \$305,346.73, claiming that there is now due and owing from the plaintiff to the School District this sum for ad valorem taxes on the property above described for the years 1949 through 1954.

VI.

Plaintiff says the School District has made demand upon it for the payment of the taxes assessed against the property, which taxes it say (sic) it does not owe. The School District, although it has been repeatedly informed by the plaintiff that it is not the owner of the property and is holding the property under a lease not for a term of three years or more, and the property is not assess-

able for taxes, and that it is not indebted to the School District for any taxes in any amount, and that its leasehold estate in the property has never, in fact, been assessed for taxes, has heretofore threatened and is now threatening to, and will, unless enjoined and restrained by this court from so doing, institute a suit in a court of competent jurisdiction against the plaintiff to collect the taxes which it claims is due and owing to it.

[fol. 13]

VII.

Plaintiff says there is no law and no statute which levies any tax against the property or any interest of the plaintiff in the property, and that the School District is without any lawful right or authority or justification in law for taxing the property or for claiming that plaintiff is indebted to it in any sum for ad valorem taxes which have been assessed against the property.

VIII.

Plaintiff says it has no plain, speedy and adequate remedy at law to protect its rights; that in order for its rights to be protected, and in order for it to be protected from the accrual of interest, penalties and other costs, and attorneys' fees which the School District is claiming should be paid, or that will be incurred in connection with any suit instituted by the School District against it to collect the taxes, the School District, its officers, agents, servants, employees, and successors in office, and each and all of them, should, in law and in equity, and in good conscience, be permanently enjoined and restrained by this court from taking any action or instituting any suit against the plaintiff to collect from it the taxes, wilfully, unlawfully and illegally assessed against the property.

IX.

Plaintiff says that if the School District is permitted to assess and collect taxes from it on property which it does not own, or on property which is by law exempt from taxation, and which by law is not taxable, or which

has not in fact been taxed, and on which it owes no taxes, such will constitute the taking of private property for public use without just compensation, and without due process of law, and deny to plaintiff the equal protection [fol. 14] of the law in violation of Sections 17 and 19 of the Constitution of the State of Texas, and the 5th and 14th Amendments to the Constitution of the United States of America, and result in great and irreparable injury to the plaintiff.

Second Cause of Action

Comes now the plaintiff and in the alternative, and in the alternative only, if for any reason it should be adjudged and determined that it is not entitled to recover upon its First Cause of Action herein alleged, and for its Second Cause of Action against the defendant, says:

I.

Plaintiff repeats the allegations contained in paragraphs I, II and III of its First Cause of Action.

II.

That on or about May 1, 1954, the School District, with the intent, purpose and design of collecting from this plaintiff the sum of \$305,346.73 as ad valorem taxes for the years 1949 through 1954, assessed for taxes as the property of Phillips Petroleum Company, all of that property set out and described in paragraph IV of its First Cause of Action, to which reference is made for a more full and complete description of said property.

III.

Plaintiff further says that if for any reason it is determined that it is the owner of the property above described, or whether the owner thereof or not, it owes any taxes thereon, or if for any reason it should be determined that its leasehold estate in the property is taxable, or has been taxed, all of which is not admitted, but is expressly denied, then and in that event, and in that event only, plaintiff says the value which the School Dis-

trict has placed on the property is arbitrary, fraudulent, [fol. 15] discriminatory, grossly excessive, exorbitant (sic) and illegal, and therefore void and not binding on this plaintiff.

IV.

Plaintiff says that on or about August 9, 1954, at the time and in the manner provided by law, it appeared before George Murphy, Carl Troutman and Homer Foreman, sitting as the legally appointed, constituted and acting Board of Equalization of the School District at Dumas, in Moore County, Texas. At that time plaintiff says it presented evidence to the Board of Equalization protesting the levying of any tax against the property, and pointing out to the board that the property assessed for taxes belonged to the Government; that the lease which it held on the property was not for a term of three years or more, and that its leasehold estate therein had not, in fact, been taxed, and that the assessed value of the property was grossly excessive.

V.

Plaintiff further alleges and shows that the Board of Equalization assessed and equalized all property within the School District for the year 1949 at the ratio of 10.06% of its value and placed a valuation on the property for tax purposes of \$3,169,790.00, thus fixing and determining the fair cash market value, or if it had no fair cash market value, the intrinsic value of the property assessed for taxes, at \$31,508,846.00, when in truth and in fact the property, for the year 1949, had an actual cash market value or intrinsic value no higher than \$9,000,000.00, and should not have been valued for tax purposes in excess of \$905,400.00, the leasehold estate therein being of no value; for the year 1950 at the ratio of 15.1% of its value, and placed a valuation on the property for [fol. 16] tax purposes of \$4,516,894.00, thus fixing and determining the fair cash market value, or it if (sic) had no fair cash market value, the intrinsic value of the property assessed for taxes, at \$29,913,205.00, when in truth and in fact the property, for the year 1950, had

an actual cash market value or intrinsic value no higher than \$9,500,000.00 and should not have been valued for tax purposes in excess of \$1,434,500.00, the leasehold estate therein being of no value; for the year 1951 at the ratio of 15.1% of its value, and placed a valuation on the property for tax purposes of \$4,168,091.00, thus fixing and determining the fair cash market value, or if it had no fair cash market value, the intrinsic value of the property assessed for taxes, at \$27,603,251.00, when in truth and in fact the property, for the year 1951, had an actual cash market value or intrinsic value no higher than \$9,000,000.00, and should not have been valued for tax purposes in excess of \$1,359,000.00, the leasehold estate therein being of no value; for the year 1952 at the ratio of 20.08% of its value, and placed a valuation on the property for tax purposes of \$5,335,387.00, thus fixing and determining the fair cash market value, or if it had no fair cash market value, the intrinsic value of the property assessed for taxes, at \$26,570,652.00, when in truth and in fact the property, for the year 1952, had an actual cash market value or intrinsic value no higher than \$8,500,000.00, and should not have been valued for tax purposes in excess of \$1,706,800.00, the leasehold estate therein being of no value; for the year 1953 at the ratio of 22.49% of its value, and placed a valuation on the property for tax purposes of \$5,232,366.00, thus fixing and determining the fair cash market value, or if it had no fair cash market value, the intrinsic [fol. 17] value of the property assessed for taxes, at \$23,265,300.00, when in truth and in fact the property, for the year 1953, had an actual cash market value or intrinsic value no higher than \$8,000,000.00, and should not have been valued for tax purposes in excess of \$1,799,200.00, the leasehold estate therein being of no value; for the year 1954 at the ratio of 25.42% of its value, and placed a valuation on the property for tax purposes of \$5,358,516.00, thus fixing and determining the fair cash market value, or if it had no fair cash market value, the intrinsic value of the property assessed for taxes, at \$21,079,921.00, when in truth and in fact the property, for the year 1954, had an actual cash market

value or intrinsic value no higher than \$7,500,000.00, and should not have been valued for tax purposes in excess of \$1,906,500.00, the leasehold estate therein being of no value.

Plaintiff says that by reason of all the matters and things above alleged, if the valuation determinations made by the Board are allowed to stand, plaintiff will be subjected to the payment of taxes, when in fact none are payable, or if any taxes are payable, to the payment of a grossly excessive amount of taxes.

VI.

Plaintiff further alleges and shows to the court that to allow the valuations fixed by the Board of Equalization to stand and to compel this plaintiff to pay taxes on the basis of such values would violate Section 1, Article 8 of the Constitution of the State of Texas which provides that taxation shall be equal and uniform, and that all property be taxed in proportion to its value, and thus subject plaintiff to the payment of more taxes than it should pay, thus resulting in injury and damage to the [fol. 18] plaintiff, and deny this plaintiff due process and equal protection of the law.

VII.

Plaintiff says that it has at all times been, and is now, ready, willing and able to pay all just, lawful and legal taxes which it owes to the School District.

VIII.

Plaintiff further alleges and would show to the court that the defendant Dumas Independent School District, under a statute of the United States so providing, made application and received from the United States of America the sum of \$28,712.87 for the school year 1950-51; \$31,997.77 for the school year 1951-52; \$33,506.78 for the school year 1952-53; \$29,998.00 for the school year 1953-54. That as the basis for receiving such Federal aid, the defendant represented to the United States of America that the Cactus Ordnance Works properties, which they

are now attempting to assess and tax as the property of this plaintiff, was Federal property belonging to the United States of America and as such not taxable.

It is plaintiff's information and belief that, in addition to the payments above alleged, the defendant Dumas Independent School District has been allocated an additional sum of \$64,296.00 by the United States of America, acting through its Commissioner of Education. That this sum was applied for by the defendant Dumas Independent School District in the year 1952 and awarded to it by the United States of America in the year 1954 as a contribution by the United States of America for the cost of constructing additional school facilities necessitated by the existence of the Cactus Ordnance Works as federally owned, tax-exempt property within the School District, [fol. 19] which property the defendant Dumas Independent School District is seeking to tax against this plaintiff. That, although said sum of \$64,296.00 has not yet been received by the Dumas Independent School District, the District intends to and will receive the amount of money as applied for from the United States of America.

Wherefore, premises considered, plaintiff prays that citation be issued to the defendant as provided by law, commanding the defendant to appear and answer herein; that upon final hearing plaintiff have and recover judgment upon its First Cause of Action, forever, perpetually and permanently enjoining and restraining the defendant, its agents, servants, employees, officers, trustee and all other persons acting under defendant's control, direction or authority from collecting or attempting to collect, by suit or otherwise, any taxes, penalties or interest from this plaintiff by reason of the assessments of the described property or leasehold therein for the years 1949 to 1954 inclusive, and from ever placing upon the tax rolls of Dumas Independent School District for the purpose of collecting taxes from this plaintiff, the property described in this petition, or the leasehold estate therein, and that all taxes levied or assessed against this plaintiff for the years 1949 to 1954 inclusive be ordered cancelled and voided with prejudice to any reassessment.

Plaintiff further prays that if for any reason it is not entitled to recover upon its First Cause of Action as prayed, and only in that event, that it recover judgment upon its Second Cause of Action, cancelling and voiding the herein described assessments for the years 1949 to 1954 inclusive, and perpetually and permanently enjoining and restraining the defendant, its agents, servants, [fol. 20] employees, officers, trustees and all other persons acting under defendant's control, direction or authority from collecting or attempting to collect, by suit or otherwise, any taxes, penalties or interest from this plaintiff by reason of the above described assessments; but without prejudice to the defendant to reassess plaintiff upon a proper valuation of the property or the leasehold interest therein, if plaintiff be taxable in law thereupon. Plaintiff also prays for such other and further relief in law and in equity, to which it may be justly entitled, and that it recover its costs.

E. H. Foster, T. M. Blume, C. Rex Boyd, Attorneys
for Phillips Chemical Company, Address: Post
Office Box 1751, Amarillo, Texas.

Proof of Service (omitted in printing).

VERIFICATION

State of Texas,
County of Potter.

Before Me, a Notary Public in and said County and State, personally appeared Clay D. Carrithers, who, being duly sworn, deposes and says:

Affiant has supervision over and is in charge of ad valorem tax matters, including assessments and payments, [fol. 21] of Phillips Chemical Company, plaintiff herein, in the Panhandle District in Texas, including the Dumas Independent School District, and is authorized to make Verification for and on behalf of plaintiff herein; affiant has read said First Amended Original Petition and knows of his own knowledge that the facts stated therein are true and correct. The reason why this Verification is

made by affiant and not by plaintiff or one of plaintiff's officers is that plaintiff is a foreign corporation and none of the officers of plaintiff resides within the jurisdiction of this court, and all of such officers are outside the State of Texas.

Clay D. Carrithers

Subscribed and Sworn to before me this 31st day of August, 1956.

Alice M. Vaughn, Notary Public in and for the State of Texas, County of Potter.

(Seal)

[File endorsement omitted]

[fol. 22]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

[Title omitted]

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER AND
CROSS-ACTION—Filed September 14, 1956

To the Honorable Judge of Said Court:

Now comes the Dumas Independent School District, hereinafter referred to as Defendant, and files, this, its First Amended Original Answer to the Plaintiff's First Amended Original Petition heretofore filed herein, and its First Amended Cross-Action against the Plaintiff, Phillips Chemical Company, in lieu of its Original Answer and Cross-Action, and for such answer and cross-action would show unto the Court the following, to-wit:

I.

The Defendant excepts to Plaintiff's Original Petition, and particularly to Paragraph VI of the First Cause of Action thereof, and says that the same is insufficient in law in that said Paragraph VI alleges only that the Defendant is threatening to institute a suit to recover

against the Plaintiff the taxes alleged in said petition, and said paragraph does not allege that said Defendant is threatening to levy upon the property of said Plaintiff, or that the collection of such taxes has been threatened or attempted by levy, and therefore said Plaintiff fails to state any grounds for equitable relief in the form of an injunction, but on the other hand, said Paragraph VI shows on its face that said Plaintiff has an adequate remedy at law, in that said Plaintiff could answer and [fol. 23] contest any suit filed by said Defendant against the said Plaintiff for collection of such taxes, wherefore said Defendant says that Plaintiff has failed to state a cause of action for injunction, of which special exception said Defendant prays judgment of the Court.

II.

The Defendant excepts to the said Petition, and particularly to Paragraph VIII of the First Cause of Action thereof, and says that the same is insufficient in law, in that no facts are alleged showing that the Plaintiff does not have a plain, speedy and adequate remedy at law to protect its rights, and nowhere in said paragraph is it alleged that the rights of Plaintiff are that need protection of a court of equity, but on the other hand, the defendant says that all matters alleged by said Plaintiff in said Paragraph VIII are matters which could properly be presented as defenses in any suit brought by the Dumas Independent School District against the Plaintiff for the collection of such taxes, and that no facts are alleged showing any particular or special right that this Plaintiff has to invoke the equitable jurisdiction of this Court, of which special exception Defendant prays judgment of the Court.

III.

And comes the Defendant and excepts specially to Paragraph VIII of the Second Cause of Action in said Plaintiff's original petition, and moves that the same be stricken from said pleading and not read to the jury, and not be considered for any purpose, and in this connection, these Defendants say that all of matters alleged in said

Paragraph VIII are immaterial, irrelevant, and prejudicial, in that any payments by the United States of America to the defendant, Dumas Independent School District, as a Federal contribution to education is a matter [fol. 24] between said school district and said government, and is of no consequence to the Plaintiff, and has no bearing upon this cause of action asserted by Plaintiff against the Defendant and has no bearing upon the taxability of the Cactus Ordnance Works, and says that such payments by the United States of America to said Defendant school district do not by any means establish taxability of said property, wherefore such allegations contained in said paragraph VIII should be stricken from said pleading, and not considered by this Court for any purpose, of which special exception Defendant prays judgment of the Court.

IV.

And comes the Defendant and excepts specially to said Plaintiff's Original Petition, in its entirety, and says that the same states no cause of action for injunction, in that it is nowhere shown in said petition that any irreparable damage would result to the said Plaintiff from any suit brought by the Defendant to collect the taxes alleged to be due, and nowhere is it stated in said petition that the Defendant is not able to respond in damages in the event any money damage should be done to said Plaintiff by reason of such suit, and nowhere is it shown that any damage other than money damage could possibly be done to said Plaintiff, wherefore said Plaintiff has failed to state a cause of action for injunction or equitable relief, of which special exception the Defendant prays judgment of the Court.

And not waiving the foregoing special exceptions, but continuing to insist thereon, but answering further if need be, comes the Defendant and shows unto the Court the following:

[fol. 25]

V.

Defendant admits that the property listed in Paragraph IV of the Plaintiff's First Amended Original Petition is

owned in fee simple by the United States of America, and that the said property is leased by the Plaintiff, Phillips Chemical Company, but Defendant denies that such property is not taxable for ad valorem taxes in the hands of said Phillips Chemical Company as lessee, and denies that the Defendant, in assessing the said property for taxes and placing the same on the tax rolls of the Dumas Independent (sic) School District, did so without any lawful right or authority to do so, and denies that such was done with the purpose, intent and design of willfully, unlawfully and illegally collecting from the Plaintiff taxes which are not due and owing; but on the other hand, the defendant says that such taxes as have been assessed against the said Plaintiff are in all respects proper and legal, and that the same constitute valid and outstanding obligations of the said Plaintiff, which the said Plaintiff owes to the Defendant, Dumas Independent School District. For a more complete statement of the grounds upon which said property is made taxable by law, reference is hereby made to the cross-action contained hereinafter in this pleading, all relevant parts are herein adopted and made a part of this answer.

VI.

The Defendant denies specifically that the valuations which the Defendant, acting by and through the Board of Equalization of the Dumas Independent School District, placed upon the said property here in question are arbitrary, fraudulent, discriminatory, excessive, exorbitant, or illegal, but on the contrary, the defendant would show the Court that such valuations as were arrived at, and upon which the assessments for the respective years in question [fol. 26] were based, were arrived at only after a full hearing upon the said question, after due notice to the Plaintiff, and that such hearing and that such valuations as were there arrived at are in all respects legal, proper, and correct. In this connection, Defendant would show the Court that the hearing before the Board of Equalization of the Defendant, Dumas Independent School District, was extensive, that the same was transcribed and recorded by an official court reporter, and that the transcript of

the testimony at such hearing comprises 275 typewritten pages, and that in addition to such transcribed testimony, there were 144 pages of written exhibits introduced in evidence at such hearing, that the plaintiff, Phillips Chemical Company, appeared at such hearing by counsel, and presented approximately ten witnesses who testified and who introduced documentary evidence. That the defendant, Dumas Independent School District, at great expense in time and money, procured the services of two separate professional engineering and appraising firms who completely appraised the said Cactus Ordnance Works, from an engineering standpoint, in order to arrive at the true and correct value thereof, and that the testimony of such engineering experts was introduced before said Board of Equalization. That after such due consideration the said Board of Equalization did place upon said Cactus Ordnance Works the valuations for tax purposes in the amounts and for the years shown in Paragraph V of the Second Cause of Action of Plaintiff's First Amended Original Petition, and that such valuations were correct, and were in all respects legal and proper, and that the same constitute correct assessments of said property for the year shown.

[fol. 27]

VII.

Except as herein specifically admitted, the defendant denies each and every allegation of Plaintiff's Original Petition, and demands strict proof thereof.

VIII.

In connection with paragraph VIII of the Second Cause of Action of Plaintiff's First Amended Original Petition, and not waiving its foregoing special exceptions, but continuing to insist that such matters as are alleged in said paragraph VIII are irrelevant and immaterial, defendant would show the Court that a substantial portion of the funds received by Defendant from the United States Government, as alleged in said paragraph VIII, had no connection with the Cactus Ordnance Works, but were granted to the said Defendant by the said United States of America for purposes wholly unconnected with the

attendance in said Defendant's school of children whose parents were connected with the said Cactus Ordnance Works.

Wherefore, premises considered, the Defendant prays that each and all of its special exceptions hereinabove set forth be sustained, and that upon final hearing herein, plaintiff's suit be in all things dismissed as to said Defendant and that all relief prayed for by said Plaintiff be denied and that Plaintiff take nothing by its suit against the Defendant and Defendant further prays that it have its costs against the said Plaintiff; and Defendant further prays for such other and further relief, either general or special, whether at law or in equity, as it may show itself entitled to receive.

James W. Witherspoon, Wayne E. Thomas, John D. Aikin, Earnest L. Langley, Box 473, Hereford, Texas, Attorneys for Defendant.

Earnest L. Langley, of Counsel.

[fol. 28] *Duly sworn to by Earnest L. Langley, jurat omitted in printing.*

CROSS-ACTION OF THE DEFENDANT DUMAS INDEPENDENT
SCHOOL DISTRICT

To the Honorable Judge of Said Court:

Now comes Dumas Independent School District, Defendant in the above entitled and numbered cause, and, as cross-plaintiff, files this its cross-action and counter-claim against the Plaintiff and cross-defendant, Phillips Chemical Company, and for such cross-action and counter-claim would respectfully show unto the Court the following:

I.

The Cross-Plaintiff, Dumas Independent School District, is a body politic and corporate, being an independent school district of the State of Texas, organized and existing under [fol. 29] and by virtue of the laws of the State of Texas, with the power to sue and be sued.

II.

The Cross-Defendant, Phillips Chemical Company, is a private corporation, duly organized under the laws of the State of Delaware, and authorized by permit to do business within the State of Texas, where it is so doing business in Moore County, Texas, as lessee and operator of the Cactus Ordnance Works.

III.

No other taxing units are impleaded herein, for the reason that this suit is not brought to establish or to foreclose a lien upon the property subject to taxation, but for the purpose only of establishing and obtaining a money judgment against the cross-defendant for taxes, penalties, interest, attorneys' fees and costs.

IV.

That the said cross-plaintiff, Dumas Independent School District, during all of the years hereinafter set forth was such duly constituted and organized independent school district, and body politic and corporate, and as such was charged with public duties, and in order to perform the same was given the power to assess and levy all those certain taxes hereinafter set forth against the hereinafter described property.

V.

That within the time and in the manner required by law, the Board of Trustees of the said Dumas Independent School District duly levied, for each year, at the rate fixed for each year, and hereinafter set forth, all those certain taxes hereinafter set forth upon and against all property included within the bounds of said school district, and the [fol. 30] owners thereof, which includes the property hereinafter set forth, and all things required by law to be done have been duly and legally performed by the proper officials.

VI.

That said property hereinafter set forth and described was not rendered for taxes to said cross-plaintiff by said cross-defendant, in any of the years hereinafter set forth, and that the same was not assessed for taxes by the Tax Collector and Assessor of said Dumas Independent School District during the years set forth, for the reason that said Dumas Independent School District did not know at the time that such property was subject to taxation by said cross-plaintiff, but that during the year 1954, said cross-plaintiff was informed that such property was expressly made taxable in the hands of said cross-defendant by law, and therefore, in the manner provided by law, said cross-plaintiff, acting by and through its duly elected and acting Board of Trustees directed its Tax Assessor and Collector to place the said property upon the tax rolls for all previous years during which such property was made taxable by law in the hands of said cross-defendant, being the years 1949 through 1954, inclusive, and directed that said Tax Assessor and Collector assess all legal and proper taxes against said property for the years during which such property was made taxable by law; and all of such was done, in the manner provided by law and all things required by law to be done in connection with the placing of such property on the rolls for the previous years have been duly and legally performed by the proper officials.

VII.

Cross-plaintiff would show the Court that the property hereinafter set forth and described is property owned in [fol. 31] fee simple by the United States of America, and that the same is leased by the United States of America to cross-defendant, Phillips Chemical Company, by that certain contract of lease entered into on July 22, 1948, by the Secretary of the Army, representing the United States of America, and acting by and through R. C. Crawford, Major General, Acting Chief of Engineers, as lessor, and the Phillips Petroleum Company of Bartlesville, Oklahoma, as lessee, the interest of said lessee having been duly assigned to the Phillips Chemical Company, cross-defendant herein.

That such lease was executed by virtue of authority contained in the Act of Congress approved August 5, 1947, being Public Law 364 of the 80th Congress, and the Act of Congress approved July 2, 1940, being 54 Stat. 712, as continued in effect by the Act of Congress approved June 5, 1942, being 56 Stat. 316.

VIII.

Said hereinafter described property, although held and owned by the United States of America, is subject to taxation by this cross-plaintiff, Dumas Independent School District, under one or more of the following statutes, or other laws or statutes not herein named, to-wit:

- (a) Article 5248 of the Revised Civil Statutes of the State of Texas, as amended by the Acts of the 1950 Legislature, providing that when lands owned by the United States are used and occupied by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in conduct of any private business or enterprise, shall be subject to taxation by the State of Texas and by its political subdivisions.
- (b) An Act of Congress approved August 5, 1947, Public Law 364, 80th Congress, 10 U.S.C.A. 1270-1270d, which was the law by virtue of which the lease here in question was made, as provided in said lease, and which said Act of Congress provides specifically that the lessee's interest in such leases shall be made subject to State or local taxation.
- [fol. 32] (c) Section 1 of Article VIII of the Constitution of the State of Texas, which provides that taxation shall be equal and uniform, and that all property in this state shall be taxed in proportion to its value. This constitutional provision was carried forward into Article 7145 of the Revised Civil Statutes of Texas.
- (d) Article 7173 of the Revised Civil Statutes of Texas, which provides that property held under a lease for a term of three years or more, that is exempt by law

from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation as the property of the person so holding the same under such lease.

- (e) Articles 7205, and 7207, Revised Civil Statutes of Texas, both of which provide for the assessment of taxes on property which has not been properly rendered for taxes in prior years.
- (f) Articles 1047 and 2791 of the Revised Civil Statutes of Texas, providing for the assessment of taxes in prior years.
- (g) Chapter 41 of Title 122, of the Revised Civil Statutes of Texas, Article 7346 et seq., providing for the assessment and collection of taxes on property omitted from the rolls in prior years.
- (h) Articles 2784 and 2785 and 2790 of the Revised Civil Statutes of Texas, providing for the levy of maintenance and bond taxes by Independent School Districts in the State of Texas.

IX.

All of the elections, assessments, levies, and other actions of any and all kinds required by any or all of the statutes and acts of Congress set forth in the immediately preceding paragraph have been done and performed by the proper officials, in the way and manner required by law, and all conditions precedent to the assessment, levy and collection of the taxes herein and for have been dully (sic) and legally complied with by said cross-plaintiff, Dumas Independent School District acting by and through its duly acting and qualified officers and officials.

X.

Cross-plaintiff would further show the Court that prior to the assessment of the taxes hereinafter set forth on the property hereinafter described, said cross-plaintiff, Dumas [fol. 33] Independent School District, duly notified the

cross-defendant, Phillips Chemical Company, that said cross-plaintiff had determined that such property was subject to taxation for the years in question, and requested said cross-defendant to render the said property for taxes, and requested a list of said property, but said cross-defendant refused to list such property and render the same for taxes for any years, after which such rendition was made by said cross-plaintiff, as required by law. That immediately upon assessing such property for taxes, said cross-plaintiff notified said cross-defendant of such assessment, gave notice to said cross-defendant of the hearing to be held by the Board of Equalization of said cross-plaintiff and said cross-defendant appeared at such meeting of said Board of Equalization, wherein, as above alleged, a full and complete hearing was had on said question of valuation and after such hearing and the introduction of all evidence that was brought by either cross-plaintiff or cross-defendant, said Board of Equalization duly adjusted the valuation of said property, and the Tax Assessor and Collector for said cross-plaintiff thereupon completed his assessment list and gave notice of the intention of said cross-plaintiff to collect said taxes to the said cross-defendant. Such property was, in all respects, duly, legally and properly assessed for taxation by the Assessor and Collector of taxes of the said cross-plaintiff, Dunias Independent School District, as required by the statutes of the State of Texas.

XI.

That the property on which the taxes were assessed and levied, as herein set forth, is the leasehold interest of the plaintiff in that property known as the Cactus Ordinance Works, fee title to which is in the United States, [fol. 34] and more particularly described in Plaintiff's First Amended Original Petition, and reference to which is hereby made for a more complete description thereof, together with all additions thereto, and all appurtenances thereto.

XII.

That for the year 1949, the actual market value of the said above described property, as found by the Board of Equalization, was \$31,508,845.00; that in said year property in said school district was assessed at 10.06% of its market value and that the assessed value of such property for said year was \$3,169,789.00; that the tax rate for said year levied by said cross-plaintiff, Dumas Independent School District was \$1.00 per \$100.00 of valuation, making a total tax due on said property for said year of \$31,697.89; that there is due and owing on said taxes the statutory penalty and interest charge from the date of delinquency until paid. That said cross-defendant became liable and bound to pay and it became its duty to pay to cross-plaintiff all of said taxes, penalties and interest hereinabove set forth; but notwithstanding the demand of cross-plaintiff therefor, cross-defendant has wholly failed and refused and still fails and refuses to pay the same or any part thereof to the damage of said cross-plaintiff in the sum of all of said taxes, penalties and interest.

XIII.

That for the year 1950, the actual market value of the said above described property, as found by the Board of Equalization, was \$29,913,209.00; that in said year property in said school district was assessed at 15.10% of its market value and that the assessed value of such property for said year was \$4,516,894.00; that the tax rate for said year levied by cross-plaintiff, Dumas Independent School District was \$1.00 per \$100.00 of valuation, making [fol. 35] a total tax due on said property for said year of \$45,168.94; that there is due and owing on said taxes the statutory penalty and interest charges from the date of delinquency until paid. That said cross-defendant became liable and bound to pay, and it became its duty to pay to cross-plaintiff all of said taxes, penalties and interest hereinbefore set forth; but notwithstanding the demand of cross-plaintiff therefor, cross-defendant has wholly failed and refused and still fails and refuses to pay the same or any part thereof, to the damage of cross-plaintiff in the sum of all said taxes, penalties and interest.

XIV.

That for the year 1951, the actual market value of the said above described property, as found by the Board of Equalization, was \$27,603,251.00; that in said year property in said school district was assessed at 15.10% of its market value and that the assessed value of such property for said year was \$4,168,091.00; that the tax rate for said year levied by said cross-plaintiff, Dumas Independent School District was \$1.00 per \$100.00 of valuation, making a total tax due on said property for said year of \$41,680.91; that there is due and owing on said taxes the statutory penalty and interest charges from the date of delinquency until paid. That said cross-defendant became liable and bound to pay, and it became its duty to pay to cross-plaintiff all of the taxes, penalties and interest hereinbefore set forth; but notwithstanding the demand of cross-plaintiff all of said taxes, penalties and interest herein-refused, and still fails and refuses to pay the same or any part thereof, to the damage of said cross-plaintiff in the sum of all of said taxes, penalties and interest.

[fol. 36]

XV.

That for the year 1952, the actual market value of the said above described property, as found by the Board of Equalization, was \$26,570,648.00; that in said year property in said school district was assessed at 20.08% of its market value and that the assessed value of such property for said year was \$5,335,387.00; that the tax rate for said year levied by cross-plaintiff, Dumas Independent School District was \$1.00 per \$100.00 of valuation, making a total tax due on said property for said year of \$53,353.87; that there is due and owing on said taxes the statutory penalty and interest charges from the date of delinquency until paid. That said cross-defendant became liable and bound to pay, and it became its duty to pay to cross-plaintiff all of said taxes, penalties and interest hereinbefore set forth; but notwithstanding the demand of cross-plaintiff therefor, cross-defendant has wholly failed and refused, and still fails and refuses to pay the same or any part thereof, to the damage of

said cross-plaintiff in the sum of all of said taxes, penalties and interest.

XVI.

That for the year 1953, the actual market value of the said above described property, as found by the Board of Equalization, was \$23,265,298.00; that in said year property in said school district was assessed at 22.49% of its market value and that the assessed value of such property for said year was \$5,232,366.00; that the tax rate for said year levied by cross-plaintiff, Dumas Independent School District was \$1.26 per \$100.00 of valuation, making a total tax due on said property for said year of \$65,927.81; that there is due and owing on said taxes the statutory penalty and interest charges from the [fol. 37] date of delinquency until paid. That said cross-defendant became liable and bound to pay, and it became its duty to pay to cross-plaintiff all of said taxes, penalties and interest hereinabove set forth; but notwithstanding the demand of cross-plaintiff therefor cross-defendant has wholly failed and refused, and still fails and refuses to pay the same or any part thereof, and

to the damage of said cross-plaintiff in the sum of all of said taxes, penalties and interest.

XVII.

That for the year 1954, the actual market value of said above described property, as found by the Board of Equalization, was \$21,079,918.00; that in said year property in said school district was assessed at 25.42% of its market value and that the assessed value of such property for said year was \$5,358,516.00; that the tax rate for said year levied by cross-plaintiff, Dumas Independent School District was \$1.26 per \$100.00 of valuation, making a total tax due on said property for said year of \$67,517.30; that there is due and owing on said taxes the statutory penalty and interest charges from the date of delinquency until paid. That said cross-defendant became liable and bound to pay, and it became its duty to pay to cross

plaintiff all of said taxes, penalties and interest hereinbefore set forth; but notwithstanding the demand of cross-plaintiff therefor, cross-defendant has wholly failed and refused, and still fails and refuses to pay the same or any part thereof, to the damage of said cross-plaintiff in the sum of all of said taxes, penalties and interest.

XVIII.

That for the year of 1955, the actual market value of the said above described property, as found by the Board [fol. 38] of Equalization was \$.....; that in said year property in said school district was assessed at% of its market value and that the assessed value of such property for said year was \$.....; that the tax rate for said year levied by cross-plaintiff, Dumas Independent School District was \$..... per \$100.00 of valuation, making a total tax due on said property for said year of \$.....; that there is due and owing on said taxes the statutory penalty and interest charges from the date of delinquency until paid. That said cross-defendant became liable and bound to pay, and it became its duty to pay to cross-plaintiff all of said taxes, penalties and interest hereinabove set forth; but notwithstanding the demand of cross-plaintiff therefor, cross-defendant has wholly failed and refused, and still fails and refuses to pay the same or any part thereof, and to the damage of said cross-plaintiff in the sum of all of said taxes, penalties and interest.

XIX.

That under the provisions of Section 6 of Article 7345b, Texas Revised Civil Statutes, the cross-plaintiff is entitled to attorneys' fees in the sum of 10% of all taxes, penalty, and interest due, together with all costs of suit, for which cross-plaintiff here sues.

XX.

Cross-plaintiff further shows the Court that other taxes, penalty and interest, as well as additional attorneys' fees

and costs, may accrue before judgment, and cross-plaintiff here sues for all such items as may become legally due and payable before judgment.

XXI.

Cross-plaintiff would further show unto the Court that [fol. 39] the Board of Trustees of said Dumas Independent School District authorized and directed this suit to be brought against the cross-defendant, and that the attorney or attorneys whose name or names are signed hereto are legally authorized and empowered to institute and prosecute this action on behalf of said cross-plaintiff.

Wherefore, cross-plaintiff prays that cross-defendant take due notice of this amended cross action, as required by law, and that on final hearing it have judgment against said cross-defendant, Phillips Chemical Company, for all said taxes, penalties, interest, attorneys' fees, and costs above set forth and alleged, for all costs of suit, and for all other relief, both general and special, either at law or in equity, to which said cross plaintiff may show itself entitled, for all of which it will ever pray.

James W. Witherspoon, Wayne F. Thomas, John D. Aikin, Earnest L. Langley, Pox 473, Hereford, Texas, Attorneys for cross-plaintiff, Dumas Independent School District.

Earnest L. Langley, of Counsel.

[File endorsement omitted]

[fol. 40]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

[Title omitted]

REQUEST FOR ADMISSION—Filed June 18, 1955

Phillips Chemical Company, Plaintiff, hereby requests Dumas Independent School District, Carl Troutman, Home

Foreman, Byron W. Smith, George Burnett, and George Murphy, individually, and as Trustees of Dumas Independent School District, and John R. Powell, individually, and in his capacity as Tax Assessor and Collector for Dumas Independent School District, Defendants, to admit the genuineness of the following documents:

(1) Lease between the Secretary of the Army of the United States of America and Phillips Petroleum Company, dated July 22, 1948, consisting of 26 pages, along with an Exhibit "A" thereto of 5 pages and a plat, photostatic copy of which Lease with its Exhibit is attached hereto as Exhibit Number 1.

(2) Assignment of Lease and Acceptance from Phillips Petroleum Company, Assignor, to Phillips Chemical Company, Assignee, dated July 30, 1948, consisting of 3 pages, photostatic copy of which is attached hereto as Exhibit Number 2.

Phillips Chemical Company, Plaintiff, further requests the above named defendants to admit the truth of the following matters of fact:

1. That the plaintiff, Phillips Chemical Company, has been, since July 30, 1948, and still is, a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, and having a permit to [fol. 41] do business in the State of Texas.

2. That Phillips Chemical Company, from August 16, 1948, to the present time, has operated within the Dumas Independent School District a plant for the production of ammonia and or nitric acid, which is commonly referred to as the Cactus Plant or the Cactus Ordnance Works.

3. That the defendants have assessed or attempted to assess for the years 1949 to 1954, inclusive, against Phillips Chemical Company the property described in Paragraph 7 of Plaintiff's Original Petition filed in this cause.

4. That the land described in Paragraph 7 of Plaintiff's Original Petition in this cause was acquired by condem-

nation proceedings by the United States of America, instituted in the United States District Court for the Northern District of Texas, Amarillo Division, against certain lands in Moore County, Texas, and being Cause Number 259 Civil on the Docket of said Court.

5. That in the condemnation suit identified in the preceding request, title was vested in the United States of America as to all of the lands described in Plaintiff's Petition and in the Cross-Action of Dumas Independent School District, except the tract of land in Moore County, Texas, described as follows:

"3. Part of Acquisition Tract No. 10: All that part of Section 29, Blk. 2-T, T. & N. O. RR Survey, lying East of U. S. Highway No. 287, containing 451.18 acres, more or less."

by a Declaration of Taking filed November 21, 1942, with a judgment thereon entered November 23, 1942.

6. That in the condemnation suit identified in request No. 4, title was vested in the United States of America as to the tract of land in Moore County, Texas, described as follows:

[fol. 42] "3. Part of Acquisition Tract No. 10: All that part of Section 29, Blk. 2-T, T. & N. O. RR Survey, lying East of U. S. Highway No. 287, containing 451.18 acres, more or less."

by a Declaration of Taking No. 2 filed December 26, 1942, with a judgment thereon entered on December 28, 1942.

7. That the United States of America owns the property upon which the defendants seek to collect taxes from the plaintiff as described in Paragraph 7 of Plaintiff's Original Petition, and that the United States of America has owned such property during all of the years 1949 to 1954, inclusive.

8. That the Dumas Independent School District received from the United States of America, as Federal aid, ap-

proximately the sums of money as indicated for the following school years:

(a) 1950-1951: \$28,712.87

(b) 1951-1952: \$31,997.77

(c) 1952-1953: \$33,506.78

(d) 1953-1954: \$29,998.00

9. That the sums of money listed in request Number 8 hereinabove, or such approximate amounts, were received under the provisions of Public Law 874, Chapter 1124, Laws of the 81st Congress, Second Session, 1950, or Title 20, Chapter 13, United States Code Annotated.

10. That the Dumas Independent School District made written applications for Federal aid under the statutes of the United States of America embraced in 20 U.S.C.A., Chapter 13 for the years 1950 to 1954, inclusive.

11. That the Cactus Ordnance Works was stated in such applications to be Federal property.

12. That of the sums received by Dumas Independent School District as listed in request Number 8, entitlement was obtained by reason of children either residing upon the lands described as Cactus Ordnance Works or residing [fol. 43] with parents employed on Cactus Ordnance Works, as to the following proportions of such sums received for each school year listed:

A. 1950-1951:

(1) Over 90%

(2) Over 75%

(3) Over 65%

(4) Over 50%

(5) Over 25%

B. 1951-1952:

(1) Over 90%

(2) Over 75%

- (3) Over 65%
- (4) Over 50%
- (5) Over 25%

C. 1952-1953:

- (1) Over 90%
- (2) Over 75%
- (3) Over 65%
- (4) Over 50%
- (5) Over 25%

D. 1953-1954:

- (1) Over 90%
- (2) Over 75%
- (3) Over 65%
- (4) Over 50%
- (5) Over 25%

13. That the Dumas Independent School District applied for and received over half of the amounts listed in Paragraph 8 upon the prediction that the Cactus Ordnance Works was Federal property as defined in 20 U.S.C.A., Chapter 13.

14. That Dumas Independent School District applied for Federal educational aid under the provisions of Title 20, Chapter 14, U.S.C.A.

15. That the Dumas Independent School District has within the past year received the sum of \$64,296.00, or thereabouts, under its application described in the preceding request.

[fol. 44] 16. That in its application or applications referred to in the two immediately preceding requests, Dumas Independent School District represented that Cactus Ordnance Works was Federal property within the meaning of 20 U.S.C.A., Chapter 14.

17. That most of the sum of \$64,296.00 received by Dumas Independent School District as indicated in the

preceding three requests was based upon the existence of Cactus Ordnance Works as "Federal Property" within the meaning of 20 U.S.C.A., Chapter 14.

18. That Phillips Chemical Company has operated Cactus Ordnance Works under the Lease Agreement attached as Exhibit Number 1 of this Request during all of the years 1949 to 1954, inclusive.

You are advised that this Request for Admissions is made under the provisions of Rule 169 of the Texas Rules of Civil Procedure and that each of the matters of which an admission is requested shall be deemed admitted unless a sworn statement is delivered to Phillips Chemical Company or its attorney on or before eleven (11) days after service upon you of this Request, as is provided in that Rule.

E. H. Foster, C. Rex Boyd, T. M. Blume, Attorneys
for Phillips Chemical Company, First National
Bank Building, Eighth and Tyler Streets, Post
Office Box 1751, Amarillo, Texas.

T. M. Blume; Of Counsel.

I certify that the above and foregoing Request for Admissions, together with Exhibits Numbers 1 and 2* attached, was served on James W. Witherspoon, Wayne E. Thomas, John D. Aikin, and Earnest L. Langley, attorneys [fol. 45] for the defendants named in this cause, by delivering a copy thereof to such attorneys by registered mail with postage prepaid, addressed to Post Office Box Number 473, Hereford, Texas, and mailed this 17th day of June, 1955.

T. M. Blume

[File endorsement omitted]

* The above mentioned Exhibits Numbers 1 and 2 were not copied in this Transcript, but are included in the Statement of Facts at Pages 8 and 44.

Hazel Haile
District Clerk, Moore County, Texas

[fol. 46]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS

[Title omitted]

REPLY TO REQUEST FOR ADMISSIONS—Filed July 11, 1955

Now come the defendants in the above entitled and numbered cause, acting by and through their duly authorized attorneys of record, and in response and reply to the request for admissions served upon said defendants by mail on the 17th day of June, 1955, make and file the following answer, to-wit:

I.

In response to the request to admit the genuineness of a certain lease between the Secretary of the Army of the United States of America and Phillips Petroleum Company, and an assignment of such lease from Phillips Petroleum Company to Phillips Chemical Company, the defendants say that it is the understanding of such defendants that the Phillips Chemical Company operates the Cactus Ordnance Works, under the terms of a lease which was assigned to said Phillips Chemical Company by the Phillips Petroleum Company, which was the original lessee from the United States of America; but none of the defendants, and none of the officers, agents or attorneys of said defendants know of their own knowledge whether or not the photostatic copy of a lease and an assignment attached to the request for admissions is in fact a copy of the original lease and assignment, and the information as to the genuineness of such lease and assignment is exclusively within the knowledge of the plaintiff and its officers, agents and attorneys, insofar as the parties to this suit are concerned; so that defendants must answer that they are unable to admit or deny the genuineness of such instruments.

II.

In response to each of the numbered requests for admissions so served upon the defendants by the plaintiff, these defendants say:

1. Admitted.

2. Admitted.

3. Admitted.

4. Although the defendants understand that the land referred to in Request No. 4 was acquired by the United States of America and is presently owned by said United States of America, none of the defendants have any knowledge as to the exact means so used by the said United States of America in acquiring such lands, and said defendants are therefore unable to admit or deny request No. 4.

5. To request No. 5, the defendants make the same answer that was made to request No. 4.

6. To request No. 6, the defendants make the same answer that was made to request No. 4.

7. It is the understanding of the defendants that the United States of America does own the property referred to in request No. 7, although it should be noted that some of such land is owned in fee while other tracts of such land are owned by easement only; and further the defendants say that there is some question as to the exact extent of the ownership of the United States of America in both the lands so referred to and in certain improvements and buildings and equipment erected on said lands, it being the understanding of the defendants that the plaintiff is the owner of some of such improvements, buildings, and equipment; [fol. 48] and further, the matter of ownership of a multi-million dollar plant being a matter of such complexity, and the defendant not being in possession of full information concerning such ownership, the said defendants state that they are unable to admit or deny request No. 7.

8. While not all of the amounts shown in request No. 8 are exactly accurate, they are essentially accurate, and the defendants admit that such approximate sums were re-

ceived in the years indicated as Federal Aid by the defendant, Dumas Independent School District.

9. Admitted.

10. Admitted.

11. Admitted.

12. The defendants say, in response to request No. 12, that said request is an improper request, in that it attempts to require the defendants to elect between one of five choices of answers to each of four different questions, and that it is not the type of request which can be admitted or denied; so that the defendants move the court to require the plaintiff to be more specific in its requests for admissions, in order that the defendants can frame a proper answer to such requests.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. The defendants are unable to specifically admit or deny request No. 17, for the reason that the word "most" is vague and indefinite, but said defendants do say that the pupils upon whose attendance in the Dumas Schools the applications referred to were made were connected with either Cactus Ordnance Works or other properties, and that [fol. 49] more than one-half of such students were connected with Cactus Ordnance Works, within the meaning of the applicable federal laws.

18. It is the understanding of these defendants that the Phillips Chemical Company has operated Cactus Ordnance Works during the years inquired about in request No. 18, and it is likewise the understanding of the defendants that such operation was under the said lease agree-

ment, but the defendants say that they have no actual knowledge of the facts involved, and therefore are unable to admit or deny said request No. 18.

III.

Except as specifically admitted in the foregoing portion of this reply, these defendants deny each and every request for admissions contained in the said request for admissions served upon the defendants by the plaintiff.

Earnest L. Langley, Attorney for defendants.

Duly sworn to by Earnest L. Langley, jurat omitted in printing.

[fol. 50] . [File endorsement omitted]

[fol. 51]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

[Title omitted]

ORDER ON PLAINTIFF'S MOTION FOR SEPARATE TRIAL—
September 14, 1956 .

On this 14th day of September, A. D. 1956, in the above entitled and numbered cause came on to be heard and considered the Motion of the Plaintiff, Phillips Chemical Company, for a separate trial of the issues made in the first cause of action of its First Amended Original Petition and in Paragraph 4 of its First Amended Original Answer to the Cross Action of the Defendant Dumas Independent School District. And came all of the parties by counsel and the Court, having heard and considered the Motion, the Affidavit in support thereof, and the argument of counsel thereon, and being of the opinion that said Motion should be granted;

It Is Therefore Ordered, Adjudged and Decreed that the Motion of the Plaintiff, Phillips Chemical Company, be and the same is hereby granted.

And It Is Further Ordered that the issues made in the first cause of action of the First Amended Original Petition of the Plaintiff and the Cross-action of the defendant and in Paragraph 4 of the First Amended Original Answer to the Cross Action of the Defendant be separately numbered and docketed on the docket of the Court for all purposes as Cause No. 2708-A.

And all parties in said cause having waived a trial by jury, It Is Ordered that the trial of Cause No. 2708-A be set down for trial before the Court on September 18, 1956, at 10:00 o'clock A. M.

[fol. 52] To all of which order, ruling and decision of the Court the defendant, Dumas Independent School District, duly excepted.

Plaintiff excepts to the language added as being broader than the motion and as indicating the trial of issues which will not be tried as per the Court's actual ruling.

Thomas M. Blume

Harry H. Schultz, Judge, District Court of Moore County, Texas.

[File endorsement omitted]

[fol. 53]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

[Title omitted]

CORRECTION ORDER--November 12, 1956

Upon Motion of Plaintiff Phillips Chemical Company, and in order that the record may correctly reflect the true facts, it is the order of the Court that the Order of September 14, 1956, granting to plaintiff a separate trial of all the issues as made in the first cause of action of its First Amended Original Petition, be and the same is hereby corrected in the following particulars:

It Is Ordered, Adjudged and Decreed that the Motion of Phillips Chemical Company for a separate trial of all the issues as made in its first cause of action be and the same is hereby granted, and that the issues for which a separate trial is ordered, be separately numbered and docketed on the docket of this court for all purposes as Cause No. 2708-A.

To all of which order, ruling and decision of the Court, the Defendant Dumas Independent School District excepted.

Done in open court this the 12th day of November, 1956.

Harry H. Schultz, Judge, District Court, Moore County, Texas.

Approved: as to form: T. M. Blume, Attorney for Phillips Chemical Company.

As to form: James W. Witherspoon, Attorney for Dumas Independent School District.

[File endorsement omitted]

[fol. 54]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

[Title omitted]

JUDGMENT—December 5, 1956

On this, the 18th day of September, 1956, came on to be heard the above entitled and numbered cause wherein Phillips Chemical Company, a corporation, is plaintiff, and Dumas Independent School District, a body politic and corporate, with power to sue and be sued, is defendant, and came all the parties in person and by their attorneys and announced ready for trial. And a jury having been waived by all parties, and all matters of law as well as of fact having been submitted to the Court and the Court having heard and considered the pleadings, the evidence and argument of counsel thereon, and being now fully advised in

the premises and being of the opinion that the law and the facts are with the plaintiff, Phillips Chemical Company, and against the defendant, Dumas Independent School District, and plaintiff, Phillips Chemical Company, is not liable for any taxes on the property known as Cactus Ordnance Works for the tax year 1949, and for the tax year 1950, beginning with January 1, 1950, through March 16, 1950:

It Is Therefore Ordered, Adjudged and Decreed that all taxes assessed and levied against the Phillips Chemical Company for the taxable year 1949 and the taxable year 1950, beginning January 1, 1950, through March 16, 1950, on the property known as Cactus Ordnance Works, described hereinafter, be and the same are hereby annulled, cancelled and set aside and held for naught, with prejudice to any reassessment.

[fol. 55] It Is Further Ordered, Adjudged and Decreed that the defendant, Dumas Independent School District, its officers and trustees, agents, servants, employees, and attorneys, ought to be and they are hereby forever and perpetually enjoined and restrained from in any way or in any manner assessing, collecting, or attempting to collect taxes or filing or attempting to file or institute any suit or action at law or in equity in any court to collect from the plaintiff, Phillips Chemical Company, any taxes upon the property known as Cactus Ordnance Works, and described as follows:

All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

That part of Sections 20, 28, 29, 36, 37, and 38, Block 2-T, T. & N. O. R. R. Survey, Moore County, Texas, being 1538.31 acres, more or less, described in 7 Tracts as follows:

1. Acquisition Tract 18; All that part of Section 20, Block 2-T, T. & N. O. R. R. Survey, Moore County, Texas, lying East of U. S. Highway No. 287 and South of the County line between Moore and Sherman Counties, containing 105.87 acres, more or less.

2. Part of Acquisition Tract 12: The W. 891 ft. of the SW/4 of Section 28, Block 2-T, T. & N. O. R. R. Survey, containing 54.00 acres, more or less.

3. Part of Acquisition Tract No. 10: All that part of Section 29, Block 2-T, T. & N. O. R. R. Survey, lying East of U. S. Highway No. 287, containing 451.18 acres, more or less.

4. 222.07 acres of Acquisition Tract No. 1; being all that part of Section 36, Block 2-T, T. & N. O. R. R. Survey, lying East of Texas State Highway No. 9 (same as U. S. Highway No. 287), except 0.38 acres, described as:

Beginning at a point in the East R. O. W. line of State Highway No. 9, said point being 2507 ft. N. of its intersection with the South line of Section 36; thence No. $89^{\circ} 41'$ E., 550 ft.; thence N. $0^{\circ} 19'$ E., 30 ft.; thence S. $89^{\circ} 41'$ W., 550 ft. to a point in the East R. O. W. line of said Highway No. 9; thence S. $0^{\circ} 19'$ W., a distance of 30 ft. along the East R. [fol. 56] O. W. line of Highway No. 9, to the point of beginning.

And also except 1.78 acres of land for site occupied by Laundry Building described as:

Beginning at a point S. $62^{\circ} 30'$ W., 1602.4 ft. and S. 47° E., 239.2 ft. of the N.E. corner of said Section 36; thence S. $47^{\circ} 42'$ E., 595 ft.; thence S. $42^{\circ} 18'$ W., 130.4 ft.; thence N. $47^{\circ} 42'$ W., 595.5 ft.; thence N. $47^{\circ} 34'$ E., 130.4 ft. to point of beginning.

5. Part of Acquisition Tract No. 2, containing four parcels of land described as:

- (a) Beginning at a point 106 ft. N. of SE corner of Section 37, Block 2-T, T. & N. O. R. R. Survey, thence N. along the East line of said Section 37; thence S. $89^{\circ} 42'$ W., 1205 ft.; thence S. $0^{\circ} 11'$ E., 848 ft.; thence N.

S. 42' E.; 1205 ft.; to point of beginning, containing 23.50 acres, more or less.

(b) Beginning at the NW corner of Section 37, Block 2-T, T. & N. O. R. R. Survey, thence S. 0° 14' E., 1466.66 feet along the W. line of said Section 37; thence N. 89° 46' E., 891 ft.; thence N. 0° 14' W., 1466.66 ft. to N. line of said Section 37; thence W. 891 ft. along the N. line of said Section 37 to point of beginning, containing 30.00 acres, more or less.

(c) A tract of land in Section 37, Block 2-T, T. & N. O. R. R. Survey, 150. in width being 75 ft. on each side of a center line described as: Beginning at a point 891 ft. E. and S., 0° 14' E., 1166.66 ft. from the NW corner of Section 37, thence S. 38° E., 2390 ft.; thence N. 83° E., 360 ft.; thence S. 47° E., 1950 ft. to a point, said point being 1165 ft. W. and 954 ft. N. of the SE corner of said Section 37, and containing 15.90 acres, more or less.

(d) Beginning at a 1" iron pipe in the West line of Section 37, Block 2-T, T. & N. O. R. R. Survey, said point being 105 ft. N. of the SW corner of said Section; thence N. along said Section line 384 ft. to a point in the Section line marked by 1" iron pipe; thence S. 44° 20' E., 538.9 ft. to a point in property line fence marked with 1" iron pipe; thence in a Westerly direction 378.1 ft. to point of beginning, and containing 1.66 acres, more or less.

6. Acquisition Tract No. 3: The NW 4 and the S/2 of Section 38, Block 2-T, T. & N. O. R. R. Survey, except 6.60 acres in the SE corner of the S/2 of Section 38, lying E. of County Road conveyed to C. R. I. & G. R. R. Co., by instrument recorded in Vol. 46 at Page 59, Deed Records of Moore County, Texas, and containing 473.40 acres, more or less.

7. Acquisition Tract No. 4: The NE 4 of Section 38, Block 2-T, T. & N. O. R. R. Survey, containing [fol. 57] 460.00 acres, more or less.

DESCRIPTION OF EASEMENT AREAS

That part of Sections 20, 21, 27, 28 and 37, Block 2-T, T. & N. O. R. R. Survey, Sherman and Moore Counties, Texas, being 56.00 acres, more or less, described in 23 Tracts as follows:

1. A water pipe line, double electric transmission line and hardsurfaced road Easement 105 ft. in width in Section 20, Block 2-T, T. & N. O. R. R. Survey, being 52.5 ft. on each side of a center line described as:

Beginning at a point 1210 ft. N. of the SE corner of said Section 20, Block 2-T, T. & N. O. R. R. Survey, thence N. 30° W., 4267 ft. to a point 50 ft. past Water Well No. 6.

2. A water pipe line, double electric transmission line and hardsurfaced road Easement 105 ft. in width in Section 21, Block 2-T, T. & N. O. R. R. Survey, being 52.5 ft. on each side of a center line described as:

Beginning at a point 560 ft. E. of the SW corner of said Section 21, Block 2-T, T. & N. O. R. R. Survey, thence N. 263 ft. to a point; thence N. 30° W., 1123 ft. to the West line of said Section 21, and 1210 ft. N. of SW corner thereof.

3. An electric transmission line Easement 15 ft. in width in Section 21, Block 2-T, T. & N. O. R. R. Survey, being 7.5 ft. on each side of a center line, described as:

Beginning at a point 200 ft. N. of the SE corner of said Section 21, Block 2-T, T. & N. O. R. R. Survey, thence in a Westerly direction 4793 ft. to intersection with a double electric transmission line, at a point 256 ft. N. and 510 ft. E. of SW corner of said Section 21.

4. A water well, wellhouse and transformer-station Easement in Section 21, Block 2-T, T. & N. O. R. R. Survey, said easement covering an area within a radius of 150 ft. from the center of existing Water Well No. 4, which is N. 49° E., 700 ft. from the SW corner of said Section 21.

5. A hard-surfaced road Easement 60 ft. in width being 30 ft. on each side of a center line described as:

Beginning at a point 91 ft. N. of SW corner of said Section 21, Block 2-T, T. & N. O. R. R. Survey, thence N. $86^{\circ} 33' 45''$ E., 614.8 ft.; thence S. $81^{\circ} 39'$ E., 822 ft. to the South line of said Section 21, and 1510 ft. E. of the SW corner thereof.

[fol. 58] 6. A water well, wellhouse and transformer station Easement for Well No. 3, in Section 22, Block 2-T, T. & N. O. R. R. Survey, described as:

Beginning at a point 250 ft. E. of SW corner of said Section 22, Block 2-T, T. & N. O. R. R. Survey, thence E. along S. line of said Section 22, 988.5 ft. to a point; thence N. $41^{\circ} 37'$ W., 531 ft. to an 8" post for a corner; thence S. $58^{\circ} 0'$ W., 749.3 ft. to point of beginning.

7. An electric transmission line Easement 15 ft. in width in Section 22, Block 2-T, T. & N. O. R. R. Survey, being 7.5 ft. on each side of a center line described as:

Beginning at a point 200 ft. N. of SW corner of Section 22, Block 2-T, T. & N. O. R. R. Survey, thence E. 656 ft. to transformer at Well No. 3.

8. Three water pipe line easements in Section 27, Block 2-T, T. & N. O. R. R. Survey, each 20 ft. in width, the center lines of which are described as:

(a) Beginning at a point 400 ft. S. of NW corner of said Section 27, Block 2-T, T. & N. O. R. R. Survey, thence N. $48^{\circ} 30'$ E., 603.65 ft. to the North line of said Section 27 and 452.1 ft. E. of NW corner thereof;

(b) Beginning at a point 1175 ft. E. of NW corner of said Section 27, Block 2-T, T. & N. O. R. R. Survey, thence S. $71^{\circ} 20'$ E., 3610 ft. to Water Well No. 5;

(c) Beginning at a point 1546 ft. N. of SW Corner of Section 27, Block 2-T, T. & N. O. R. R. Survey, thence N. $69^{\circ} 30'$ E., 1220 ft. to Water Well No. 8.

9. A double electric transmission line easement 35 ft. in width in Section 27, Block 2-T, T. & N. O. R. R.

Survey, being 17.5 ft. on each side of a center line described as:

(a) Beginning at a point 2456 ft. N. of SW corner of said Section 27, Block 2-T, T. & N. O. R. R. Survey, thence N. 72° E., 5239 ft. to transformer-station at Well No. 5;

(b) A single electric transmission line Easement 15 ft. in width in Section 27, Block 2-T, T. & N. O. R. R. Survey, being 7.5 ft. on each side of a center line described as: Beginning at a point on above described line and 870 ft. Easterly from the Westerly end thereof; thence S. 12° 30' E., 670 ft. to transformer-station at Well No. 8.

10. A water well, wellhouse and transformer-station in Section 27, Block 2-T, T. & N. O. R. R. Survey, being an area within a radius 130 ft. from the center [fol. 59] of Well No. 5, said well being located 4595 ft. E., and 1155 ft. S. of NW corner of said Section 27.

11. Two hard-surfaced road Easements, each being 60 ft. in width in Section 27, Block 2-T, T. & N. O. R. R. Survey, the center lines of which are described as:

(a) Beginning at a point 1584 ft. N. of SW corner of said Section 27, Block 2-T, T. & N. O. R. R. Survey, thence N. 69° 30' E., 950 ft.; thence N. 60° E., 4313 ft. to Well-Site No. 5 and

(b) Beginning at a point 970 ft. E. of NW corner of said Section 27, Block 2-T, T. & N. O. R. R. Survey, thence S. 62° E., 3340 ft. more or less to point of intersection with road easement as described above.

12. An electric transmission line and transformer-station Easement, 15 ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and 730 ft. N. of SW corner of said Section 28, Block 2-T, T. & N. O. R. R.

Survey, thence No. 90 E., 2276 ft. to and including transformer-station at Well No. 2.

13. A double electric transmission line Easement 25 ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and 1030 ft. N. of the SW corner of said Section 28, Block 2-T, T. & N. O. R. R. Survey, thence N. 72° E., 4658 ft. to a point in East Section line of said Section 28 and 2456 ft. N. of SE corner thereof.

14. A water pipe line and electric transmission line Easement, 35 Ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 400 ft. E. of the West Quarter corner of said Section 28, Block 2-T, T. & N. O. R. R. Survey, thence N. 2° 43' E., 2640 ft. to a point in the North Section line of said Section 28 and 525 ft. E. of NW corner thereof.

15. A hard-surfaced road Easement 60 ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 891 ft. E., and 1480 ft. N. of SW corner of said Section 28, Block 2-T, T. & N. O. R. R. Survey, thence S. 74° E., 2421 ft. to Well Site No. 2, thence N. 69° 30' E., 2240 ft. to point in East Section line of Section 28 and 1584 ft. N. of SE corner thereof.

[fol. 60] 16. A hard-surfaced road easement 60 ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 1510 ft. E. of NW corner of Section 28, Block 2-T, T. & N. O. R. R. Survey, thence S. 81° 39' E., 462 ft.; thence S. 7° 50' W., 713.5 ft.; thence S. 17° 57' W., 262.3 ft.; thence S. 55° 48' W., 1856.9 ft.; thence S. 42° 6' W., 252 ft. to the West line of said Section 28 and 396 ft. N. of the West Quarter Section corner.

17. An Easement covering 4.00 acres in said Section 28, Block 2-T, T. & N. O. R. R. Survey, for burning and disposal of waste material, described as:

Beginning at a point 1918 ft. E. of NW corner of Section 28, Block 2-T, T. & N. O. R. R. Survey, thence E. along said Section 400 ft. to a point; thence S. 435 ft.; thence W. 400 ft.; thence N. 435 ft. to point of beginning.

18. A water-well and water pipe line Easement, 20 ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 1861 ft. E. of the SW corner of said Section 28, Block 2-T, T. & N. O. R. R. Survey, thence N. 59° 30' E., 1570 ft. to said well No. 2, thence N. 69° 30' E., 2240 ft. to a point in the East line of said Section 28, and 1546 ft. N. of the SE corner thereof.

19. A drainage ditch Easement, 20 ft. in width in said Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at Well No. 2, thence in a South-easterly direction to a point in the South line of Section 28, Block 2-T, T. & N. O. R. R. Survey, said point being 1680 ft. W. of the SE corner thereof.

20. A water pipe line Easement, 20 ft. in width in Section 28, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at point 891 ft. E. and 1030 ft. N. of SW corner of said Section 28, Block 2-T, T. & N. O. R. R. Survey, thence N. 48° 30' E., 5875 ft. to a point in the East line of said Section 28, and 400 ft. S. of NE corner thereof.

21. A water pipe line Easement 15 ft. in width in said Section 37, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and S. 0° 14' E., 571 ft. of the NW corner of said Section 37, Block 2-T,

T. & N. O. R. R. Survey, thence N. 59° 30' E., 1126 ft. to point in North line of said Section 37 and 1861 ft. E. of NW corner thereof.

[fol. 61] 22. A gas pipe line Easement, being 6 ft. in width in said Section 37, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 1392 ft. W. of the SE corner of said Section 37, Block 2-T, T. & N. O. R. R. Survey, thence N. 30° 15' W., 5950 ft. to E. line of Government property and 137 ft. S. of N. line of Section 37.

23. A drainage ditch easement, 50 ft. in width in said Section 37, Block 2-T, T. & N. O. R. R. Survey, the center line of which is described as:

Beginning at a point 1110 ft. S. of the NE corner of said Section 37; thence N. 62° W., 1640 ft.; thence in a northwesterly direction to a point on N. line of said Section 37 and 1640 ft. W. of the NE corner thereof;

for the leasehold estate therein for the tax year 1949, and for the tax year 1950, beginning January 1, 1950, through March 16, 1950.

To all of which order, ruling and decision of the Court defendant, Dumas Independent School District, in open court, objected and gave notice of appeal to the Court of Civil Appeals for the Seventh Supreme Judicial District of Texas, sitting at Amarillo.

It further appearing to the Court, and the Court being of the opinion that the law and the facts are with the defendant, Dumas Independent School District, and against the plaintiff, Phillips Chemical Company, for the tax year 1950, beginning with March 17, 1950, and for the tax years 1951, 1952, 1953 and 1954, and that the property covered by the lease between the United States as lessor and plaintiff, Phillips Chemical Company, as lessee, located in the Dumas Independent School District in Moore County, Texas, including the property above described, known and described as the Cactus Ordnance Works, is not used and occupied by the United States but is used and occupied by the plaintiff, Phillips Chemical Company, a private cor-

[fol. 62] poration in its private capacity, in the conduct of its private business and enterprise, for its profit, and was so used and occupied for such private purpose during each of the years for which the defendant, Dumas Independent School District, has sought to levy and collect taxes for the years 1949 to 1954, both inclusive, and that such property is subject to taxation by the defendant, Dumas Independent School District, of Moore County, Texas, as a political subdivision of the State of Texas, and that the same is taxable to Phillips Chemical Company for the years beginning March 17, 1950, and for the tax years of 1951, 1952, 1953, and 1954, and that the property was duly and legally assessed for taxes to Phillips Chemical Company for said years beginning March 17, 1950.

It Is Therefore Ordered, Adjudged and Decreed that all relief prayed for in this cause of action by the plaintiff, Phillips Chemical Company, for the tax year 1950 beginning with March 17, 1950, and for the tax years 1951, 1952, 1953 and 1954, be and the same is hereby in all things denied; to which order, ruling and decision of the Court the plaintiff, Phillips Chemical Company, objected and gave notice of appeal to the Court of Civil Appeals for the Seventh Supreme Judicial District, sitting at Amarillo.

It Is Further Ordered, Adjudged and Decreed that the defendant, Dumas Independent School District, do have and recover all of its costs in this behalf expended, for which let execution issue.

Done in open court this 5th day of December, A. D. 1956.

Harry H. Schultz, Judge Presiding.

Approved as to form:

L. M. Blume, Attorney for Plaintiff.

James W. Witherspoon, Attorney for Defendant.

[fol. 64]

IN THE DISTRICT COURT OF MOORE COUNTY, TEXAS,
69TH JUDICIAL DISTRICT

Cause No. 2708-A

PHILLIPS CHEMICAL COMPANY, Plaintiff,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT, Defendant.

STATEMENT OF FACTS—Filed January 21, 1957

A 6639

Filed in Supreme Court of Texas
February 12, 1958

Geo. H. Templin, Clerk, By Jewell Seeliger, Deputy
Joe G. Nisbett, Official and General Reporting, Box 1104,
Dalhart, Texas

#6697

Filed in the Court of Civil Appeals for the Seventh
Supreme Judicial District of Texas

January 31, 1957

Elmo Payne, Clerk, By

[File endorsement omitted]

[fol. 67]

APPEARANCES:

Mr. Rex Boyd, Amarillo, Texas, Mr. Tom Blume, Amarillo, Texas, For the Plaintiff.

Mr. Earnest L. Langley, Hereford, Texas, Mr. Wayne E. Thomas, Hereford, Texas, For the Defendant.

Be It Remembered That on the 18th day of September, 1956, the above entitled and numbered cause came on to be heard before the Honorable Harry H. Schultz, Judge

of the 69th Judicial District Court of Moore County, Texas, and the following proceedings were had:

[fol. 68]

STIPULATIONS

Mr. Blume: Does the defendant stipulate to the following facts: That the United States of America acquired lands described in Paragraph 4 of Plaintiff's First Amended Original Petition by condemnation proceedings in the United States District Court for the Northern District of Texas, Amarillo Division, in Case Number 259 Civil, styled United States of America versus 10,750 acres of land, et al.?

Mr. Langley: We so stipulate.

Mr. Blume: Do you further stipulate that the United States has held the fee simple title so acquired subject to the lease held by Phillips Chemical Company at all times relevant to this case, Number 2708-A?

Mr. Langley: We will so stipulate.

Mr. Blume: Will you further stipulate that the Governor of the State of Texas has never ceded to the United States an exclusive jurisdiction of the lands described in Paragraph Number 4 of Plaintiff's First Amended Original Petition as is provided for under Article 5247, Vernon's Annotated Revised Civil Statutes of Texas?

Mr. Langley: May I ask Counsel why that particular thing is of any particular relevancy?

Mr. Blume: It is relevant to show—for the same purpose [fol. 69] as the prior stipulation—to show that there is no coverage of this land under the terms of Article 5248.

Mr. Langley: If the Court, please, let the record show that the defendant objects to the admission of that on the grounds of lack of relevancy but, nevertheless, the defendant knows such stipulation to be a fact and, in the interest of time, we will stipulate that it is a fact but reserve objection to the admission of it in evidence because of a lack of relevancy.

The Court: All right.

Mr. Blume: I would like to introduce a copy of the lease and assignment under which Phillips Chemical Company

has been operating the subject plant and there is in the record, attached to certain Requests for Admissions, a photostatic copy of this lease and we would like to introduce that as our first exhibit.

Mr. Langley: The only objection we have to that, Your Honor, is that the lease, so appended to the Request for Admissions, is not a complete copy of the lease by reason of the failure to include therein certain exhibits specified in the lease contract itself. As far as we know or understand and we will stipulate it to be a fact that the base lease itself, appended to the so called Request for Ad-[fol. 70] missions filed a number of months ago, together with the assignment, are true and correct copies so far as they go but that they are lacking in completeness by reason of not having the exhibits attached thereto. We have no objection to the introduction of it in evidence except that the record should show it is not complete.

Mr. Blume: They do make reference to an Exhibit B, which is an inventory of the bolts and nuts and so forth and, as Counsel well knows, that is a sheaf of papers about a foot high.

Mr. Langley: That is correct and I am not saying it should be in evidence—the Exhibit B nor, I believe, an Exhibit C, likewise referred to—but, nevertheless, it should show that the lease is not complete because the exhibits are not in the hands of the defendant and have never been and we do not wish to be precluded in this proceeding or otherwise from showing that this lease contract does have certain inventories and other items attached to it which may become relevant, if not in the first cause of action then in the second cause of action.

Mr. Blume: But, you have no objection to such parts that are introduced?

Mr. Langley: That is right.

Mr. Blume: I take it Counsel has no objection to the [fol. 71] introduction of the assignment of such lease which is appended hereto.

Mr. Langley: That is correct.

PLAINTIFF'S EXHIBIT NUMBER ONE

RECEIVED

JUL 29 1948

R.W.T. OFFICE

Cactus Plant

Contract no. W-41-038-Eng-6047

Phillips Petroleum Company

M-16900

LEASE

THIS LEASE, made between the SECRETARY OF THE ARMY, of the first part, representing the United States of America (hereinafter called the Government), and PHILLIPS PETROLEUM COMPANY, a *Delaware Corporation with an operating office at Bartlesville, Oklahoma*, (hereinafter called the Lessee) of the second part, WITNESSETH:

THAT, the Secretary of the Army, by virtue of authority contained in the Act of Congress approved August 5, 1947, (Public Law 364—80th Congress), and in the Act of Congress approved July 2, 1940 (54 Stat. 712), as continued in effect by the Act of Congress approved June 5, 1942 (56 Stat. 316), and in consideration of the observance and performance by the Lessee of the covenants and conditions hereinafter set forth, hereby leases to the Lessee for the following period or periods:

a primary term of fifteen (15) years commencing on [fol. 72] August 16, 1948, and ending August 15, 1963; provided, however, that said primary term may be extended as follows:

(a) Lessee shall have and is hereby granted the right and privilege at its option to extend the term of this lease for a period of time beginning August 16, 1963, and ending August 15, 1968, upon the same terms and conditions as in this lease set forth, provided that Lessee gives notice of its election so to extend this lease for said five (5) year extension period at least six (6) months before the expiration of the fifteen (15) year primary term;

(b) If Lessee exercises its option to extend this lease for said first five (5) year extension period, Lessee shall have and is hereby granted the right and privilege at its

option to extend this lease for a second five (5) year extension period beginning August 16, 1968, and ending August 15, 1973, upon the same terms and conditions as in this lease set forth, provided that Lessee gives notice of its election so to extend this lease for said second five (5) year extension period at least six months prior to August 15, 1968:

(c) If Lessee exercises its option to extend this lease for said second five (5) year extension period, this lease [fol. 73] shall continue in full force and effect from year to year thereafter, unless and until terminated by either party by six (6) months' prior written notice given at least six months before August 15, 1973, or August 15 of any subsequent year; subject, however, to termination as hereinafter provided, the land and buildings, improvements, machinery, and appurtenances thereto belonging, as described on Exhibits A and B, attached hereto and made a part hereof, hereinafter referred to as the Leased Property, to be used for the purpose of manufacturing anhydrous ammonia or fertilizer and for other commercial and experimental purposes. The Government shall furnish, if requested by the Lessee, as a part of the Leased Property eight complete ammonia oxidation units as recognized by the trade with a total rated capacity of 440 tons nitric acid per day (calculated as 100%) and in addition, ammonium nitrate solution facilities with sufficient capacity to convert 70,000 short tons anhydrous ammonia per annum. Such equipment shall be dismantled at its present locations, moved to and re-erected on the site of the Cactus Ordnance Works at a location to be approved by the Division Engineer, Southwestern Division, by and at the expense of the Lessee. This equipment does not include equipment for supporting utilities. Notice [fol. 74] of Lessee's intention to utilize the ammonia oxidation or solution facilities herein specified in whole or in part, shall be made in writing not later than ten days after the commencement date of this lease; the Government upon receipt of said notice will promptly notify lessee of the location of said facilities. Lessee shall thereupon be required to dismantle and remove said facilities under the supervision of the Division Engineer not less

than six months after advice by the Government of the location of said facilities and to erect said facilities and place them in operating condition in accordance with plans and specifications submitted to and approved by the Division Engineer within a period of two (2) years from the date of removal of said equipment from its present location, provided however, that the Division Engineer will extend the said period of two (2) years for a period of time considered by him to be necessary in the event completion of erection and the placing in operation of said facilities is delayed or prevented by unforeseeable causes beyond the control and without the fault or negligence of the Lessee and provided further that the Lessee so advises the Division Engineer within ten (10) days from the occurrence of such event. All such facilities shall remain the property of the Government. Any equipment furnished by the Lessee to complete [fol. 75] the erection and place into operation the said facilities shall remain the property of the Lessee notwithstanding the provisions of Condition 17 of this lease.

THIS LEASE is granted subject to the following provisions and conditions:

1. That the Lessee agrees to pay the Government in monthly installments due in advance on the first day of each month rental at the rate of One Million Twenty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,026,666.67) per annum so long as this lease remains in force and effect; provided, however, that the aggregate actually expended by the Lessee in an effort to place the Leased Property in an insurable condition as specified in Condition 19, which amount shall not exceed One Million Dollars (\$1,000,000) and shall be considered prepaid rental, shall be credited on and applied against the first cash rentals becoming due and payable by the Lessee hereunder. The compensation as above reserved shall be made payable to the Treasurer of the United States and shall be forwarded by the Lessee to the Division Engineer, Southwestern Division, Dallas, Texas, or to a representative designated by him. During the period the Government purchases all or a portion of

the production of the plant as provided in Condition 6 of this lease, the rental provided above will be adjusted [fol. 76] as follows:

The rental for such period will be reduced in the same ratio as the number of tons of anhydrous ammonia purchased from Lessee by the Government or used in the manufacture of fertilizer or other products manufactured from anhydrous ammonia produced on the Leased Property and purchased by the Government under Condition 6 of this lease bears to the total anhydrous ammonia production capacity of the plant (estimated to be at the rate of 70,000 short tons per annum of anhydrous ammonia from the first train upon completion of rehabilitation of the fire damage to the said first train caused by the fire of March 6, 1948, and 70,000 short tons per annum for the second train upon completion of the said second train as provided in Condition 4 of this lease) or the total number of tons of anhydrous ammonia actually produced, whichever is greater; provided that if, for any reason beyond the control of Lessee actual production is less than the production capacity of the plant, then the rental will be reduced in the same ratio which the quantities furnished to the Government as aforesaid bear to actual production. Adjustments of rental, in the event of overpayment of rentals for any month shall be made at the commencement of the monthly rental period following such payment. The rental provided [fol. 77] herein includes compensation for use of one locomotive designated as U.S.A. No. 7313, Serial No. 15277, and one locomotive designated as U.S.A. No. 7683, Serial No. 4144. Terms and conditions governing the furnishing of said locomotives by the Government and their use by the Lessee are incorporated into an agreement ancillary to this lease, a copy of which is attached hereto, Exhibit C.

2. Except as in this lease otherwise specifically provided, all duties, responsibilities and liabilities incumbent upon the Lessee under the provisions and conditions of this lease shall attach upon the date of commencement of the lease term.

3. That at the commencement date of this lease, a survey and inventory of the Leased Property, including, but not limited to, all supplies, machinery, equipment and tools embraced therein, shall be made by a representative of the Government and a representative of the Lessee. Said survey and inventory shall be submitted to the Division Engineer for approval, and upon approval, a copy thereof shall be attached hereto as Exhibit B and become a part hereof, as fully as if originally incorporated herein. There shall be added to said survey and inventory from time to time such additional Government property, fixtures and installations as are furnished by or at the [fol. 78] expense of the Government. At the expiration or termination of this lease, a similar survey and inventory shall be prepared and submitted to the Division Engineer, said survey and inventory to constitute the basis for settlement by the Lessee with the Division Engineer for leased property shown to be lost, damaged or destroyed, and, subject to the provisions of Condition 19, any such property shall be either replaced, restored and/or settled for pursuant to the provisions of Condition 20 of this lease. Supplies included in the survey and inventory which are used by the Lessee shall be, at the election of the Government, either replaced to stores in kind or reimbursement therefor shall be made by the Lessee at the then current market value thereof upon the expiration or termination of this lease.

4. (a) That the Lessee has inspected and knows the condition of the Leased Property and that it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever, and without obligation on the part of the Government to make any alterations, repairs or additions thereto, provided however that the Government will complete full restoration of damage caused by the fire which occurred on March 6, 1948, and other damages, if any, not including ordinary wear and tear, due to causes occurring subsequent thereto and prior to the date of commencement of this lease. (b) That the Lessee shall at its expense, within a period of twenty-four (24) months after the commencement date of this lease, complete and operate

that ammonia train at the plant now in an incompleated condition (hereinafter sometimes referred to as the "second ammonia train") in such manner as to double the plant's present capacity of seventy thousand (70,000) short tons per annum for the production of anhydrous ammonia, provided, however, that the Division Engineer will extend the said period of twenty-four (24) months for a period of time considered by him to be necessary in the event completion and operation of said ammonia train is delayed or prevented by unforeseeable causes beyond the control and without the fault or negligence of the Lessee and provided, further, that the Lessee so advises the Division Engineer within ten (10) days from the occurrence of such event. (c) That the Lessee may make such additional improvements to the Leased Property, at the expense of the Lessee, as are necessary to perform processing for fertilizer and/or other products.

5. That title to those improvements purchased and installed by the Lessee to complete the second ammonia train at the plant, as required in Condition 4 (b) above, shall remain in the Lessee except as otherwise provided [fol. 80] in this Condition 5. Lessee shall maintain adequate accounts in accordance with accepted accounting and business practices which will reflect the initial capital investment, for said second ammonia train and shall also reflect the amortization thereof (amortization to be computed at the maximum depreciation rates allowable by the Treasury Department, Bureau of Internal Revenue, for such capital investments). Upon complete amortization of said initial capital investment during the continuance of this lease, title to said improvements shall vest in the Government. If, however, prior to complete amortization of said capital investment for such improvements the Government terminates this lease pursuant to Condition 21 (a) or Condition 22 below, the Government will pay to the Lessee, if appropriated funds are available for such purpose, the unamortized amount of Lessee's capital investment for such improvements, title to said improvements to vest in the Government upon such payment; provided, however, that if the Government does not pay to Lessee

the unamortized amount of Lessee's capital investment for such improvements within thirty (30) days after notice of such termination of this lease by the Government, then Lessee shall have and is hereby given and granted the right and privilege at its option to remove within a period of two hundred forty (240) days from the Leased [fol. 81] Property a sufficient quantity of its improvements to equal in salvage value the unamortized amount of the Lessee's capital investment for such improvements.

6. That giving effect to the other conditions of this lease the Lessee shall operate the Leased Property and any improvements made thereto by the Lessee (including such improvements and additions as may be made by the Lessee to the Leased Property for the purpose of producing ammonia and/or end product fertilizer) in such manner as not to interrupt the flow of ammonia into the fertilizer program of the Government and continuously for the period following the commencement date of this lease and ending June 30, 1952, for the production of anhydrous ammonia and/or fertilizer, unless the Secretary of the Army (or head of any agency of the Government which may be designated to discharge the obligations of the Government for the production of fertilizer) shall during such period notify the Lessee in writing that such production is no longer required by the Government. The Lessee shall during such period furnish to the Government so much of the output of the plant, including the entire capacity thereof, as may be necessary in the discretion of the Secretary of the Army (or the head of the agency discharging the obligations of the Government for the production of fertilizer), provided, however, that nothing in [fol. 82] this Condition shall obligate the Lessee to provide anhydrous ammonia and/or fertilizer in excess of the actual production of the Leased Property and any improvements made thereto by the Lessee if for any reasons beyond the control of the Lessee the actual production is less than capacity production. All sales of anhydrous ammonia and/or fertilizer by the Lessee to the Government hereunder shall be made at the following prices or the current commercial market prices in effect at the time of delivery, whichever are lower:

- (a) The first 70,000 short tons of anhydrous ammonia per 12 month period (beginning on the commencement date of this lease and ending on the last prior date in the succeeding year) at \$26.74 per short ton f.o.b. cars to be furnished or arranged for by the Government on side tracks at the Leased Property near Etter, Texas.
- (b) Additional anhydrous ammonia (all above the first 70,000 short tons per 12-month period) at \$37.26 per short ton f.o.b. cars to be furnished or arranged for by the Government on side tracks at the Leased Property near Etter, Texas.
- (c) Ammonium sulphate, fertilizer grade with 21% by weight minimum nitrogen content, up to a maximum of 266,000 short tons per 12-month period, at \$39.66 [fol. 83] per short ton in bulk f.a.s. any port on the Gulf Coast designated by the Lessee with the Lessee providing a sufficient quantity of four-ply bags to accompany the ammonium sulphate to permit it to be bagged at destination; provided, however, that ammonium sulphate, fertilizer grade, with 20.5% by weight minimum nitrogen content may be so delivered hereunder at the option of the Lessee, and if any such ammonium sulphate, fertilizer grade, with nitrogen content from 20.5% to 21% by weight is so delivered hereunder, said price of \$39.66 per short ton shall be reduced \$0.28 per short ton for each 0.1% by weight by which the nitrogen content of such ammonium sulphate is less than 21% by weight.
- (d) Ammonium nitrate, fertilizer grade, with 33.2% by weight minimum nitrogen content, in lieu of the first 70,000 short tons of anhydrous ammonia equivalent to 155,500 short tons of such ammonium nitrate or any part thereof per 12-month period, at \$46.54 per short ton in export type bags f.o.b. cars at the Lessee's ammonium nitrate plant near Etter, Texas.
- (e) Ammonium nitrate, fertilizer grade, with 33.2% by [fol. 84] weight minimum nitrogen content, in lieu

of the anhydrous ammonia produced in excess of the first 70,000 short tons per 12-month period equivalent to 155,500 short tons of such ammonium nitrate or any part thereof per 12-month period, at \$37.66 per short ton in export type bags f.o.b. cars at the Lessee's ammonium nitrate plant near Etter, Texas.

Delivery of anhydrous ammonia and/or end product fertilizer shall be in accordance with the terms and conditions more specifically set forth in supply contracts entered into from time to time by the Government (represented by the Chief of Ordnance) with the Lessee. These contracts as they are entered into from year to year will contain conditions and price provisions substantially the same as those appearing on forms of Supply Contracts attached hereto and marked Exhibits D, E and F. All prices specified in this Condition 6 are subject to adjustment to compensate for changes in the cost of labor and material and for changes in freight rates, if applicable. The price of natural gas for the purpose of escalation has been fixed by agreement between the Government and the Lessee at 3.45 cents per thousand cubic feet for the period August 16, 1948 through September 30, 1948, and at 6.667 cents per thousand cubic feet for the [fol. 85] period October 1, 1948 through June 30, 1952, said gas to be measured at 13.7 pounds per square inch absolute and 60 degrees Fahrenheit.

It is understood and agreed by and between the Government and the Lessee that if the Lessee provides facilities for the production of end product ammonium nitrate, fertilizer grade, and/or ammonium sulphate, fertilizer grade, the Lessee may at any time and from time to time in the absence of a national emergency declared by the President or the Congress of the United States, at Lessee's election after three months' notice in writing to the Government, furnish to the Government, except during periods of national emergency declared by the President or the Congress of the United States at which times such election shall be inoperative, and the Government will purchase at the prices and during the period

stated in this Condition 6 ammonium sulphate, fertilizer grade, and or ammonium nitrate, fertilizer grade, in lieu of and equivalent to anhydrous ammonia to be furnished and delivered to the Government pursuant to supply contracts entered into between the Government and the Lessee:

1. Ammonium sulphate, fertilizer grade, with 20.5% by weight minimum nitrogen content, up to a maximum of 266,000 short tons per 12-month period and or [fol. 86]
2. Ammonium nitrate, fertilizer grade, with 33.2% by weight minimum nitrogen content, not in excess of the equivalent of anhydrous ammonia or that portion of anhydrous ammonia, if any, not utilized in the processing of ammonium sulphate, fertilizer grade.

The following method will be used for price calculations during any period in which ammonium nitrate, fertilizer grade, and/or ammonium sulphate, fertilizer grade, in lieu of any portion or all of the anhydrous ammonia production of the Leased Property, is being furnished and delivered to the Government:

Anhydrous ammonia furnished and delivered up to 70,000 short tons per 12-month period will be considered as having been furnished and delivered from the first 70,000 short tons of anhydrous ammonia produced on the Leased Property, notwithstanding that ammonium sulphate, fertilizer grade, and/or ammonium nitrate, fertilizer grade, are furnished and delivered during the same period. Ammonium nitrate, fertilizer grade, will be considered as having been furnished from anhydrous ammonia produced at the plant in excess of anhydrous ammonia furnished and delivered to the Government in the form of anhydrous [fol. 87] ammonia and/or the equivalent in ammonium sulphate, fertilizer grade, during the same period.

7. (a) That if, at any time during the term of this lease or any extension thereof, a national emergency is declared by the President or the Congress of the United States and the Secretary of the Army determines that it is necessary to utilize the productive capacity of the plant

for manufacture of anhydrous ammonia and or other products required for the national defense the Government will undertake to negotiate a satisfactory contract with the Lessee for the furnishing of such products up to the maximum capacity of the plant, provided, however, that nothing in this Condition shall obligate the Lessee to provide such products in excess of actual production of the Leased Property and any improvements made thereto by the Lessee if for any reason beyond the control of the Lessee the actual production is less than capacity production. In the event a mutually satisfactory contract cannot be negotiated with the Lessee within a period of thirty days, the Government may terminate the lease in accordance with Condition 21 (a):

(b) That if, after receipt by the Lessee of the notice provided for in Condition 6 of this lease, or June 30, 1952, whichever occurs first, and in the absence of a [fol. 88] national emergency declared by the President or the Congress of the United States, the Secretary of the Army determines that it is necessary to utilize the productive capacity of the plant, the Government shall have and is hereby granted the right, upon one year's notice is writing to the Lessee to acquire all or a portion of the production of the Leased Property and any improvements made thereto by the Lessee in the form of anhydrous ammonia or other products at prices mutually satisfactory and not exceeding the then current market prices for similar products, or at the then current market prices for similar products.

8. That the Lessee shall maintain an adequate property control and accounting system consistent with generally accepted accounting and business practices to establish the costs of capital improvements, the costs of placing the Leased Property in an insurable condition as provided in Condition 19, and those elements of the costs of production of the anhydrous ammonia and/or the fertilizer end product which are necessary to establish price changes in accordance with the escalation provisions of Condition 6 hereof and the escalation provisions of the Supply Contracts ancillary hereto, and quantities pro-

duced. Such records and accounts will be made available at all reasonable times upon request of the Secretary of [fol. 89] the Army (or the head of agency discharging the obligations of the Government for production of fertilizer).

9. That the Lessee shall assume operation of all utility and service facilities existing at the installation and arrange for such additional utilities or services as may be required in the operation of the plant. The Lessee shall keep in force and effect during the term of this lease legally binding rights to supplies of gas sufficient to operate the Leased Property and improvements made thereto by the Lessee at full capacity for production of ammonia.

10. That the Lessee shall make available to the Government information concerning any technological discoveries and/or improvements in the field of nitrogen fertilizer made in the course of and resulting from operation of the Leased Property or any addition or improvements made thereto by the Lessee, and shall grant to the Government a non-exclusive, royalty free license under any patents of the Lessee covering such technological discoveries and/or improvements with the right in the Government to sublicense any lessee, vendee or transferee of a Government-owned plant utilizing the processes for the manufacture of anhydrous ammonia and/or nitrogen fertilizer, such sublicense to be limited, [fol. 90] nowever, to the operation of such plant.

11. That the Lessee shall neither transfer nor assign this lease; nor sublet the Leased Property or any part thereof; nor grant any interest, privilege or license whatsoever in connection therewith without permission in writing from the Division Engineer; provided, however, that with written notice to the Division Engineer the Lessee shall have the right without such permission to assign its right hereunder to the Phillips Chemical Company, such assignment to be effective for so long as said company remains a wholly owned subsidiary of the Lessee, in which event the liability of the Lessee for performance of the terms and conditions of this lease shall remain

unimpaired by such assignment; provided, further, that this paragraph shall not prohibit the Lessee, for its own account or under any such other arrangements as it may deem desirable from dispensing and selling food, groceries, meats, soft drinks, tobacco products, confectionery, other articles and requisite services to the employees and visitors of the Lessee on the Leased Property, and to nonemployees occupying facilities in the housing area; and provided, further, that this paragraph shall not prohibit the Lessee, incident to its administration of the housing area known as Cactus Courts from subleasing [fol. 91] facilities therein situated. The Lessee shall not without legal cause evict tenants who are veterans of World War II occupying facilities in said area at the commencement date of this lease.

12. That the Government for itself and its designees reserves the right at any time to enter the Leased Property for the purpose of inspection, inventory, the disposition of materials other than Leased Property, and when otherwise deemed necessary for the protection of the interests of the Government.

13. That the Government shall not be responsible for damages to the property of the Lessee nor for damages to the property or injuries to the person of the Lessee's officers, agents, servants or employees or other persons on the Leased Property as invitees or licensees of the Lessee arising from the use of the Leased Property by the Lessee, and the Lessee shall indemnify and save the Government harmless from any and all such claims. The Government shall not be responsible for damages to any persons or property off the Leased Property, including but not limited to damages incident to the discharge of waste or effluent from the Leased Property in such a manner that such discharge contaminates streams or other bodies of water or otherwise becomes a public nuisance, arising from the Lessee's use of the Leased Property and [fol. 92] the Lessee shall indemnify and save the Government harmless from any and all claims for such damages.

14. That the Government agrees to grant and hereby grants to Lessee a royalty free, revocable, non-transferrable

and non-exclusive license to use in the plant all patent rights that the Government may have the right to license or sub-license covering the process or apparatus used in the plant, including additions to or enlargements thereof. The Government further agrees not to revoke the license granted herein unless the lease is otherwise terminated in accordance with its provisions. That the Lessee agrees to indemnify the Government, its officers, agents, servants and employees against liability, including costs and expenses for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be ordered to be kept secret under the provisions of the act of October 6, 1917, as amended; 35 U.S.C. 42) occurring in the performance of this contract; provided, however, that the above indemnity shall not apply to such infringement arising out of operation of the two ammonia trains now situated in the plant where the operation thereof is in behalf of the Government; this proviso is however, subject to the condition that such ammonia trains are operated by the Lessee to utilize the same process or [fol. 93] processes as heretofore practiced in such trains.

15. That, subject to the provisions of Condition 19, all portions of the Leased Property being used by the Lessee shall at all times be maintained in good operating condition by and at the expense of the Lessee and said portions of the Leased Property shall be kept in as good order and condition as that existing upon the date possession of the Leased Property was delivered to the Lessee, ordinary wear and tear excepted, by and at the expense of the Lessee. Installed and other equipment of the Government used by the Lessee which becomes worn or damaged by use so as no longer to function for the purpose for which designed shall be replaced by the Lessee by like items at the expense of the Lessee, and title to such replacements shall vest in the Government at the time of replacement, provided, however, that in the event such equipment has become obsolete, it may with the prior written consent of the Division Engineer be replaced by the Lessee with substitute equipment approved by the Division Engineer, in which event the inventory provided

for in Condition 3 of this lease will be appropriately modified, title to such substitute equipment to vest in the Government at the time of replacement and title to the replaced equipment to vest in the Lessee at such time.

[fol. 94] 16. That, subject to the provisions of Condition 19, all portions of the Leased Property not being used by the Lessee shall be maintained in standby condition, by and at the expense of the Lessee, in accordance with established industrial standards.

17. That no structures, additions or betterments, temporary or permanent, shall be placed upon the Leased Property without the prior written approval of the Division Engineer nor shall any property which is now or may ultimately become the property of the Government be removed without such approval. All such structures, additions and betterments to the Leased Property shall become the property of the Government when annexed unless otherwise provided by separate agreement between the Division Engineer and the Lessee, or by the terms of Condition 5 of this lease. The Lessee shall make no structural alteration of the Leased Property which will render the Leased Property unsuitable for restoration within a period of one hundred twenty (120) days to the purpose for which originally designed. Installed and other equipment may be altered, replaced or improved without the prior written approval of the Division Engineer, provided that such alterations, replacements or improvements will not prevent the return of the Leased Property to [fol. 95] the condition existing at the time of entry by the Lessee under this lease within a period of one hundred and twenty (120) days, and provided, further, that all such alterations, replacements or improvements shall become the property of the Government when made. The Lessee shall prepare and maintain adequate drawings showing the location and connections and other installation data of each item, or part thereof, reconnected or removed from its installed location, and the Lessee shall tag, for identification purposes, each principal item or part thereof, so removed, to insure a minimum of time and expense in restoration.

18. That if, during the term of this lease, the Leased Property or a substantial part thereof, is destroyed or rendered unfit for occupancy or for the purpose for which it was leased without fault, negligence, bad faith or willful misconduct of any officer or director of Lessee or representative of Lessee having supervision of the Leased Property as a whole, acting within the scope of his authority and employment, the obligation of the Lessee to pay rental shall be reduced in proper proportion until such part of the Leased Property shall have been repaired and restored to fitness for occupancy and for the purpose for which it was leased. In such event or in the event of termination of this lease pursuant to the [fol. 96] provisions of Condition 21(a), prepaid rental shall be appropriately refunded.

19. Upon taking possession of the Leased Property pursuant to the provisions and conditions of this lease, the Lessee shall use its best efforts to procure and thereafter maintain at its cost a standard fire and extended coverage insurance policy or policies on the Leased Property to the full insurable value thereof. If the Lessee is unable to procure such insurance on all or any part of the Leased Property because of the condition thereof, the Lessee shall endeavor to place the Leased Property in an insurable condition within a reasonable time, which, it is agreed, shall be a period not exceeding one (1) year. All cost in connection therewith shall be borne by the Lessee; provided, however, that title to materials and equipment removed from the Leased Property by the Lessee (with the approval of the Division Engineer as provided in Condition 17) in a bona fide effort to place said property in an insurable condition shall be vested in the Lessee and funds derived from the sale thereof, of funds equal to the salvage value thereof if said materials and equipment shall be retained by Lessee (to be determined by mutual agreement between Lessee and the Division Engineer), shall be expended by Lessee in furtherance of the effort to place said property in an insurable condition. In addition to said funds, the Lessee shall expend a maximum of One Million Dollars (\$1,000,000), if necessary, in an effort to place the Leased

Property in an insurable condition, provided that the plans and specifications and estimated costs shall be agreed upon by the Lessee and the Division Engineer.

During the period required for placing the Leased Property in an insurable condition or in the event the Leased Property cannot be placed in an insurable condition by the aforesaid expenditures or during any period in which the Lessee is unable to procure and/or maintain insurance coverage at the rates hereinafter mentioned, the Lessee shall not be liable for any damage to or destruction of that portion of the Leased Property which is not fully insured provided that such damage or destruction is without the fault, negligence, bad faith or willful misconduct of any officer or director of Lessee or representative of Lessee having supervision of the Leased Property as a whole, acting within the scope of his authority and employment, and results from any of the following causes:

Fire; lightning, windstorm, cyclone, tornado, hail and other acts of God; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles [fol. 98] running on land or tracks, excluding vehicles owned or operated by the Lessee or any agent or employee of the Lessee; smoke, sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval or air forces of the United States in resisting enemy attack.

The Lessee shall endeavor to procure the aforesaid fire and extended coverage insurance from any responsible insurer or insurers qualified to do business in the United States of America which will issue such insurance on the Leased Property in compliance with the rates established by the Texas Rating Bureau. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property dam-

aged or destroyed, any balance of the proceeds not required or used by the Lessee for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government; provided, however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee.

[fol. 99] If, during the term hereof, while the Lessee in maintaining insurance coverage thereon as hereinbefore provided and under circumstances relieving the Lessee of any liability therefor, the Leased Property shall be damaged to such an extent as to become inoperative, and if the Leased Property can be repaired, restored or replaced only through the expenditure of funds substantially in excess of those paid under insurance policies and if the Government does not elect to supplement said sums paid under insurance policies to an extent sufficient to repair, restore, or replace, at the Government's expense, the Leased Property, then and in those events Lessee shall have the option of making such repairs and replacements at its own expense or of terminating this lease, at any time within one hundred twenty (120) days following such damage or destruction, by giving the Government ninety (90) days notice in writing of Lessee's desire and intention so to do, in which last mentioned event all sums payable under said insurance policy or policies as a result of such damage shall be payable to the Government.

If, during the term hereof and while no insurance is in force and effect covering the Leased Property, said Property shall be damaged under circumstances relieving the Lessee of any liability therefor and the Government does [fol. 100] not elect to repair or restore said Property, then in such event Lessee, if it so desires, may cancel this lease, at any time within one hundred twenty (120) days following such damage or destruction, by giving the Government ninety (90) days notice in writing of Lessee's desire and intention so to do.

Except to the extent it is relieved of the obligation so to do by the foregoing provisions of this Condition 19,

the Lessee shall repair, restore and replace Leased Property as elsewhere provided in this lease. Nothing contained in this lease shall be construed as an obligation upon the Government to repair, restore and replace the Leased Property, or any part thereof.

20. That upon the expiration or revocation of this lease, the Lessee shall, if required by the Government, (a) within the shortest possible time, but in no case in excess of 120 days from the date of expiration of this lease or 240 days from the date written notice of revocation of this lease is received, remove such of its property as has not become the property of the Government under the terms of this lease, except as in this lease otherwise specifically provided, and within the shortest possible time, but in no case in excess of 120 days from the date written notice of revocation is received, or from the date of [fol. 101] expiration, subject to the provisions of Condition 19, restore the Leased Property (except land areas occupied by property of the Lessee to be removed during the 240 day period provided above, which land areas will be restored as herein provided during said 240 day period) to as good order and condition as that existing upon the date of commencement of the term of this lease, less ordinary wear and tear, and place the Leased Property in "standby condition for extended storage," according to established industrial standards, the cost of so restoring the Leased Property and so placing the Leased Property in standby condition for extended storage to be borne by the Lessee, or (b) remove such of its property as has not become the property of the Government under the terms of this lease except as in this lease otherwise provided, and within the shortest possible time place the Leased Property in an operating condition suitable for the Government's production purposes, provided, however, in the event the cost of placing the Leased Property in said operating condition is in excess of the estimated cost of restoring the Leased Property and placing it in 'standby condition for extended storage' as required by Condition 20 (a) of this lease the Government shall pay the Lessee the amount of the difference in said costs, and in the event the cost of placing the Leased Property in said operating

condition is less than the estimated cost of restoring the [fol. 102] Leased Property and placing it in standby condition for extended storage as required by Condition 20 (a) of this lease, the Lessee shall pay the Government the amount of the difference between said costs, or (c) remove such of its property as has not become the property of the Government under the terms of this lease, except as in this lease otherwise provided, and return the Leased Property to the Government in an "as is" condition, the Lessee to pay the Government the amount of the estimated cost of restoring the Leased Property and placing it in "standby condition for extended storage" as required by Condition 20 (a) of this lease. In the event the Government elects upon expiration or other termination of this lease to have the Leased Property restored and placed in standby condition for extended storage as required by Condition 20 (a), or placed in an operating condition as required by Condition 20 (b), the Lessee shall upon the completion of the work required thereby, immediately and peaceably yield the same to the Government in said condition. If the Lessee shall fail or neglect to remove its property, or to restore the Leased Property or to place the Leased Property in standby condition for extended storage, or to yield the Leased Property, as herein provided, then the Government may cause the property of the Lessee to be removed, and [fol. 103] the Leased Property to be restored and conditioned, and the cost of such removal, restoration and conditioning shall be paid by the Lessee to the Government upon demand, and no claim for damages against the Government or its officers or agents shall be created by or made on account of such removal, restoration and conditioning. In aid of its obligation so to return the Leased Property, the Lessee shall maintain a program for the proper use, protection, care and maintenance of the Leased Property, as well as a property control and accounting system consistent with good business practice. The Lessee shall exercise due diligence to protect the Leased Property against damage or destruction by fire, sabotage and other causes, but the liability of the Lessee for loss thereof or damage thereto shall be as provided in the other terms and conditions of this lease.

21. That the Government may terminate this lease at any time by giving thirty (30) days' written notice by the Division Engineer to the Lessee (a) in the event there is a declaration of national emergency by the President or the Congress of the United States, or (b) in the event the Lessee violates any of the terms and conditions of this lease and continues and persists therein for fifteen (15) days after notice thereof in writing by the Division Engineer.

[fol. 104] 22. That the Government shall have the right to revoke this lease in order to permit the sale of the Leased Property; provided, however, that Lessee shall be given at least ninety (90) days prior written notice of such proposed revocation for such purpose shall not become effective until the date of the actual consummation of such sale of the Leased Property by formal transfer of title thereto to the purchaser. Lessee shall have and is hereby granted the right of first refusal to purchase the Leased Property in the event of such revocation at the best bona fide price and terms and conditions offered to and acceptable to the Government by a prospective purchaser ready, able and willing to purchase such Leased Property; and the Government shall, before making any sale or agreement to sell such Leased Property to any other person than Lessee, give notice to Lessee of the price and other terms and conditions offered by such prospective purchaser, and for a period of thirty (30) days after the date of receipt by Lessee of such notice, Lessee shall have the right to give notice to the Government that Lessee desires to purchase such Leased Property at the price and upon the terms and conditions so offered by such prospective purchaser. If Lessee shall give such notice within such thirty-day period, the Government shall execute and deliver unto [fol. 105] Lessee appropriate instruments of conveyance necessary to vest title to the Leased Property in Lessee upon payment by Lessee of the amount of the purchase price. If Lessee shall not so elect to purchase such Leased Property, the Government shall be free to sell the same at the price and on the terms and conditions specified in such notice to Lessee, but if such sale is not consummated at such price and on such terms and conditions within six (6)

months after such notice to Lessee of the price and other terms and conditions offered by the prospective purchaser, then no subsequent sale of the Leased Property shall be made unless and until the Government shall have again complied with all provisions of this Condition 22 on the part of the Government to be done and performed and the Lessee shall again have the same rights and privileges as hereinabove in this Condition 22 set forth. The provisions of this Condition 22 shall be and remain in effect at all times so long as this lease shall be and remain in effect, whether during the primary term of this lease or any extension or renewal thereof.

23. That prior to the commencement date of this lease, the Lessee shall procure and maintain at its own cost a performance bond, in the penal sum of four million dollars (\$4,000,000) plus an amount equal to the first two years' [fol. 106] rental provided in Condition No. 1 of this lease in such form as is approved by the Division Engineer, executed by acceptable surety or sureties. Such bond shall provide that the Lessee shall expend a sum sufficient to provide for completion of the second ammonia train required under Condition 4 of this lease or four million dollars (\$4,000,000) whichever is less; and that the Lessee shall pay the first two years' rental hereunder as provided in Condition 1 of this lease.

24. (a). That all uranium, thorium, and all other materials determined pursuant to section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this instrument are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land

in quantities which may not be transferred or delivered [fol. 107] without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

(b) That nothing herein contained shall be construed to authorize the Lessee to explore, develop or operate the Leased Property for the production or extraction of oil, gas, or any other minerals except water, and the Government hereby reserves the right to enter upon the Leased [fol. 108] Property for the purpose of producing and extracting oil, gas and other minerals, provided, however, that said right shall be exercised in such a manner as not to interfere with the rights of the Lessee hereunder.

25. That, except as otherwise specifically provided in this lease, all disputes concerning questions of fact which may arise under this lease, and which are not disposed of by mutual agreement, shall be decided by the Division Engineer, who shall reduce his decision to writing and mail a copy thereof to the Lessee at its address shown herein. Within thirty (30) days from said mailing the Lessee may appeal in writing to the Secretary of the Army, whose written decision or that of his designated representative or representatives thereon shall be final and conclusive upon the parties hereto. The Secretary of the Army may, in his discretion, designate an individual, or individuals, other

than the Division Engineer, or a board as his authorized representative to determine appeals under this condition. The Lessee shall be afforded an opportunity to be heard and offer evidence in support of his appeal. The President of the board, from time to time, may divide the board into divisions of one or more members and assign members thereto. A majority of the members of the board or of a division thereof shall constitute a quorum for the [fol. 109] transaction of the business of the board or of a division, respectively and the decision of a majority of the members of the board or of a division shall be deemed to be the decision of the board or of a division, as the case may be. If a majority of the members of a division are unable to agree on a decision or if within thirty (30) days after a decision by a division, the board or the president thereof directs that the decision of the division be reviewed by the board, the decision will be so reviewed, otherwise the decision of a majority of the members of a division shall become the decision of the board. If a majority of the members of the board is unable to agree upon a decision the president will promptly submit the appeal to the Assistant Secretary of the Army for his decision upon the record. A vacancy in the board or in any division thereof shall not impair the powers, nor affect the duties of the board or division nor of the remaining members of the board or division, respectively. Any member of the board, or any examiner designated by the president of the board for that purpose may hold hearings, examine witnesses, receive evidence and report the evidence to the board or to the appropriate division, if the case is pending before a division. Pending decision of a dispute hereunder the Lessee shall diligently proceed with the performance of this lease.

[fol. 110] 26. That no member of or delegate to Congress or Resident Commission shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation.

27. That the Lessee warrants that it has not employed any person to solicit or secure this lease upon any agree-

ment for commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this lease, or, in its option, to collect from the Lessee the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Lessee upon contracts or leases secured or made through bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing this lease.

28. That all notices to be given pursuant to this lease shall be addressed, if to the Lessee, to *Phillips Petroleum Company, Bartlesville, Oklahoma*, if to the Government, to the Division Engineer, Southwestern Division, Dallas, Texas, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope [fol. 111] or wrapper, addressed as aforesaid, marked as registered mail, with registry fee prepaid and deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

29. That the Lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed, or imposed upon the Government or upon the Lessee with respect to or upon the Leased Property. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the Lessee therein), this Lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments, or similar charges which were imposed upon such Lessee with respect to its leasehold interest in the premises prior to the granting of such consent by the Congress; provided, that, in the event that the

parties hereto are unable to agree, within ninety (90) days [fol. 112] from the date of the imposition of such taxes, assessments, or similar charges, on a rental which, in the opinion of the Division Engineer, constitutes a reasonable return to the Government on the Leased Property, then, in such event, the Division Engineer shall have the right to determine the amount of the rental, which determination shall be binding on the Lessee subject to appeal in accordance with Condition 25 of this lease.

30. That the Lessee shall furnish office facilities without charge and living quarters, if available, at the prevailing rates charged others for similar accommodations, to such Government representatives as may be required to be on the Leased Property from time to time for the purpose of administering the terms and conditions of this lease.

31. That, except as otherwise specifically provided herein, the term "Division Engineer" as used herein shall include his duly appointed successors and his authorized representatives.

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this 22nd day of July 1948.

(s) R. C. CRAWFORD

R. C. Crawford

Major General

[fol. 113]

Acting Chief of Engineers

THIS LEASE is also executed by the Lessee this 23rd day of July 1948.

PHILLIPS PETROLEUM COMPANY

(s) R. C. JOPLING (SEAL)

Title Vice President

Bartlesville, Oklahoma

(Post Office Address)

Signed and Sealed
in the presence of:

(s) C. A. WHITFIELD

(s) LAWSON B. KNOTT, JR.

C E R T I F I C A T E

I, T. S. Gay, certify that I am the Assistant-Secretary of the corporation named as Lessee herein; that R. C. Jopling, who signed this lease on behalf of the Lessee, was then Vice-President of said corporation; that said lease was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(s) T. S. GAY

(CORPORATE SEAL)

CACTUS ORDNANCE WORKS DESCRIPTION OF FEE-OWNED LANDS

That part of Sections 20, 28, 29, 36, 37 and 38, Block 2-T, T. & N. O. RR Survey, Moore County, Texas, being 1538.31 acres, more or less, described in 7 tracts as follows:

[fol. 114] 1. Acquisition Tract 18: All that part of Section 20, Blk. 2-T, T. & N. O. RR Survey, Moore County, Texas, lying East of U. S. Highway No. 287 and South of the County line between Moore and Sherman Counties, containing 105.87 acres, more or less.

2. Part of Acquisition Tract 12: The W. 891 ft. of the SW $\frac{1}{4}$ of Section 28, Blk. 2-T, T. & N. O. RR Survey, containing 54.00 acres, more or less.

3. Part of Acquisition Tract No. 10: All that part of Section 29, Blk. 2-T, T. & N. O. RR Survey, lying East of U. S. Highway No. 287, containing 451.18 acres, more or less.

4. 222.07 acres of Acquisition Tract No. 1, being all that part of Section 36, Blk. 2-T, T. & N. O. RR Survey, lying East of Texas State Highway No. 9 (same as U. S. Highway No. 287), except 0.38 acres, described as:

Beginning at a point in the East R.O.W. line of State Highway No. 9, said point being 2507 ft. N. of its intersection with the South line of Section 36; thence N. 89° 41' E., 550 ft; thence N. 0° 19' E., 30 ft; thence

S. 89° 41' W., 550 ft. to a point in the East R.O.W. line of said Highway No. 9; thence S. 0° 19' W., a distance of 30 ft along the East R.O.W. line of Highway No. 9 to the point of beginning.

[fol. 115] And also except 1.78 acres of land for site occupied by Laundry Building described as:

Beginning at a point S. 62° 30' W., 1602.4 ft. and S. 47° E., 239.2 ft. of the NE corner of said Section 36; thence S. 47° 42' E., 595 ft; thence S. 42° 18' W., 130.4 ft; thence N. 47° 42' W., 595.5 ft. thence N. 47° 34' E., 130.4 ft to point of beginning.

5. Part of Acquisition Tract No. 2, containing four parcels of land described as:

- (a) Beginning at a point 106 ft. N. of SE corner of Section 37, Blk. 2-T, T. & N. O. RR Survey, thence N. along the East line of said Section 37; thence S. 89° 42' W., 1205 ft; thence S. 0° 11' E., 848 ft; thence No. 89° 42' E., 1205 ft; to point of beginning, containing 23.50 acres, more or less.
- (b) Beginning at the NW corner of Section 37, Blk. 2-T, T. & N. O. RR survey, thence S. 0° 14' E., 1466.66 ft. along the W. line of said Section 37; thence N. 89° 46' E., 891 ft; thence N. 0° 14' W., 1466.66 ft to N. line of said Section 37; thence W. 891 ft along the N. line of said Section 37 to point of beginning, containing 30.00 acres, more or less.

[fol. 116] (c) A tract of land in Section 37, Blk. 2-T, T. & N. O. RR Survey, 150 ft. in width being 75 ft. on each side of a center line described as: Beginning at a point 891 ft. E. and S., 0° 14' E., 1466.66 ft from the NW corner of Section 37, thence S. 38° E., 2390 ft; thence N. 83° E., 360 ft; thence S. 47° E., 1950 ft. to a point, said point being 1165 ft. W. and 954 ft. N. of the SE corner of said Section 37, and containing 15.90 acres, more or less.

- (d) Beginning at a 1" iron pipe in the West line of Section 37, Blk. 2-T, R. & N. O. RR Survey, said point

being 105 ft. N. of the SW corner of said Section; thence N. along said Section line 384 ft to a point in the Section line marked by 1" iron pipe; thence S. 44° 20' E., 538.9 ft. to a point in property line fence marked with 1" iron pipe; thence in a Westerly direction 378.1 ft. to point of beginning, and containing 1.66 acres, more or less.

6. Acquisition Tract No. 3: The NW $\frac{1}{4}$ and the S $\frac{1}{2}$ of Section 38, Blk. 2-T, T. & N. O. RR Survey, except 6.60 acres in the SE corner of the S $\frac{1}{2}$ of Section 38, lying E. of County Road conveyed to C.R.I.&G. RR Co., by instrument recorded in Vol. 46 at page 59, Deed Records of [fol. 117] Moore County, Texas, and containing 473.40 acres, more or less.

7. Acquisition Tract No. 4: The NE $\frac{1}{4}$ of Section 38, Blk. 2-T, T. & N. O. RR Survey, containing 160.00 acres, more or less.

DESCRIPTION OF EASEMENT AREAS

That part of Sections 20, 21, 27, 28 and 37, Blk. 2-T, T. & N. O. RR Survey, Sherman and Moore Counties, Texas, being 56.00 acres, more or less, described in 23 Tracts as follows:

1. A water pipeline, double electric transmission line and hard-surfaced road Easement 105 ft. in width in Section 20, Blk. 2-T, T. & N. O. RR Survey, being 52.5 ft. on each side of a center line described as:

Beginning at a point 1210 ft. N. of the SE corner of said Section 20, Blk. 2-T, T. & N. O. RR Survey, thence N. 30° W., 4267 ft. to a point 50 ft. past Water Well No. 6.

2. A water pipeline, double electric transmission line and hard-surfaced road Easement 105 ft. in width in Section 21, Blk. 2-T, T. & N. O. RR Survey, being 52.5 ft. on each side of a center line described as:

Beginning at a point 560 ft. E. of the SW corner of said Section 21, Blk. 2-T, T. & N. O. RR Survey, thence

N. 263 ft. to a point; thence N. 30° W., 1123 ft. to [fol. 118] the West line of said Section 21, and 1210 ft. N. of SW corner thereof.

3. An electric transmission line Easement 15 ft. in width in Section 21, Blk. 2-T, T. & N. O. RR Survey, being 7.5 ft. on each side of a center line, described as:

Beginning at a point 200 ft. N. of the SE corner of said Section 21, Blk. 2-T, T. & N. O. RR Survey, thence in a Westerly direction 4793 ft. to intersection with a double electric transmission line, at a point 256 ft. N. and 510 ft. E. of SW corner of said Section 21.

4. A water well, wellhouse and transformer-station Easement in Section 21, Blk. 2-T, T. & N. O. RR Survey, said Easement covering an area within a radius of 150 ft. from the center of existing Water Well No. 4, which is N. 49° E., 700 ft. from the SW corner of said Section 21.

5. A hard-surfaced road Easement 60 ft. in width, being 30 ft. on each side of a center line described as:

Beginning at a point 91 ft. N. of SW corner of said Section 21, Blk. 2-T, T. & N. O. RR survey, thence N. 86° 33' 45" E., 614.8 ft.; thence S. 81° 39' E., 822 ft. to the South line of said Section 21, and 1510 ft. E. of the SW corner thereof.

6. A water well, wellhouse and transformer-station [fol. 119] Easement for Well No. 3, in Section 22, Blk. 2-T, T. & N. O. RR Survey, described as:

Beginning at a point 250 ft. E. of SW corner of said Section 22, Blk. 2-T, T. & N. O. RR Survey, thence E. along S. line of said Section 22, 988.5 ft. to a point; thence N. 41° 37' W., 531 ft. to an 8" post for a corner; thence S. 58° 0' W., 749.3 ft. to point of beginning.

7. An electric transmission line Easement 15 ft. in width in Section 22, Blk. 2-T, T. & N. O. RR Survey, being 7.5 ft. on each side of a center line described as:

Beginning at a point 200 ft. N. of SW corner of Section 22, Blk. 2-T, T. & N. O. RR Survey, thence E. 656 ft. to transformer at Well No. 3.

8. Three water pipeline easements in Section 27, Blk. 2-T, T. & N. O. RR Survey, each 20 ft. in width, the center lines of which are described as:

(a) Beginning at a point 400 ft. S. of NW corner of said Section 27, Blk. 2-T, T. & N. O. RR Survey, thence N. 48° 30' E., 603.65 ft. to the North line of said Section 27 and 452.1 ft. E. of NW corner thereof;

(b) Beginning at a point 1175 ft. E. of NW corner of said Section 27, Blk. 2-T, T. & N. O. RR Survey, thence S. 71° 20' E., 3610 ft. to Water Well No. 5.

[fol. 120] (c) Beginning at a point 1546 ft. N. of SW corner of said section 27, Blk. 2-T, T. & N. O. RR Survey, thence N. 69° 30' E., 1220 ft. to Water Well No. 8.

9. A double electric transmission line easement 35 ft. in width in Section 27, Blk. 2-T, T. & N. O. RR Survey, being 17.5 ft. on each side of a center line described as:

(a) Beginning at a point 2456 ft. N. of SW corner of said Section 27, Blk. 2-T, T. & N. O. RR Survey, thence N. 72° E., 5239 ft. to transformer station at Well No. 5;

(b) A single electric transmission line Easement 15 ft. in width in Section 27, Blk. 2-T, T. & N. O. RR Survey, being 7.5 ft. on each side of a center line described as: Beginning at a point on above described line and 870 ft. Easterly from the Westerly end thereof; thence S. 12° 30' E., 670 ft. to transformer station at Well No. 8.

10. A water well, wellhouse and transformer station in Section 27, Blk. 2-T, T. & N. O. RR Survey, being an area within a radius 130 ft. from the center of Well No. 5, said well being located 4595 ft. E., and 1155 ft. S. of NW corner of said Section 27.

[fol. 121] 11. Two hard-surfaced road Easements, each being 60 ft. in width in Section 27, Blk. 2-T, T. & N. O. RR Survey, the center lines of which are described as:

- (a) Beginning at a point 1584 ft. N. of SW corner of said Section 27, Blk. 2-T, T. & N. O. RR Survey, thence N. $69^{\circ} 30'$ E., 950 ft.; thence N. 60° E., 4313 ft. to well site No. 5 and,
- (b) Beginning at a point 970 ft. E. of NW corner of said Section 27, Blk. 2-T, T. & N. O. RR Survey, thence S. 62° E., 3340 ft. more or less to point of intersection with road easement as described above.

12. An electric transmission line and transformer-station Easement 15 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and 730 ft. N. of SW corner of said Section 28, Blk. 2-T, T. & N. O. RR Survey, thence N. 90° E., 2276 ft. to and including transformer-station at Well No. 2.

13. A double electric transmission line Easement 25 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and 1030 ft. N. of the SW corner of said Section 28, Blk. 2-T, T. & N. O. RR [fol. 122] Survey, thence N. 72° E., 4658 ft. to a point in East Section line of said Section 28 and 2456 ft. N. of SE corner thereof.

14. A water pipeline and electric-transmission line Easement, 35 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 400 ft. E. of the West Quarter corner of said Section 28, Blk. 2-T, T. & N. O. RR Survey, thence N. $2^{\circ} 43'$ E., 2640 ft. to a point in the North Section line of said Section 28 and 525 ft. E. of NW corner thereof.

15. A hard-surfaced road easement, 60 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 891 ft. E., and 1480 ft. N. of SW corner of said Section 28, Blk. 2-T, T. & N. O. RR Survey, thence S. 74° E., 2421 ft. to Well Site No. 2, thence N. $69^{\circ} 30'$ E., 2240 ft. to point in East Section line of Section 28, and 1584 ft. N. of SE corner thereof.

16. A hard-surfaced road easement 60 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 1510 ft. E. of NW corner of Section 28, Blk. 2-T, T. & N. O. RR Survey, thence S. 81° [fol. 123] $39'$ E., 462 ft.; thence S. $7^{\circ} 50'$ W., 713.5 ft.; thence S. $17^{\circ} 57'$ W., 262.3 ft.; thence S. $55^{\circ} 48'$ W., 1856.9 ft.; thence S. $42^{\circ} 6'$ W., 252 ft. to the West line of said Section 28 and 396 ft. N. of the West Quarter Section corner.

17. An Easement covering 4.00 acres in said Section 28, Blk. 2-T, T. & N. O. RR Survey, for burning and disposal of waste material, described as:

Beginning at a point 1918 ft. E. of NW corner of Section 28, Blk. 2-T, T. & N. O. RR Survey, thence E. along said Section 400 ft. to a point thence S. 435 ft.; thence W. 400 ft.; thence N. 435 ft. to point of beginning.

18. A water-well and water pipeline Easement, 20 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 1861 ft. E. of the SW corner of said Section 28, Blk. 2-T, T. & N. O. RR Survey, thence N. $59^{\circ} 30'$ E., 1570 ft. to said Well No. 2, thence N. $69^{\circ} 30'$ E., 2240 ft. to a point in the East line of said Section 28, and 1546 ft. N. of the SE corner thereof.

19. A drainage ditch Easement, 20 ft. in width in said Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line [fol. 124] of which is described as:

Beginning at Well No. 2, thence in a Southeasterly direction to a point in the South line of Section 28, Blk. 2-T, T. & N. O. RR Survey, said point being 1680 ft. W. of the SE corner thereof.

20. A water pipeline Easement, 20 ft. in width in Section 28, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and 1030 ft. N. of SW corner of said Section 28, Blk. 2-T, T. & N. O. RR Survey, thence N. $48^{\circ} 30'$ E., 5875 ft. to a point in the East line of said Section 28, and 400 ft. S. of NE corner thereof.

21. A Water pipe line Easement 15 ft. in width in said Section 37, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 891 ft. E. and S. $0^{\circ} 14'$ E., 571 ft. of the NW corner of said Section 37, Blk. 2-T, T. & N. O. RR Survey, thence N. $59^{\circ} 30'$ E., 1126 ft. to point in North line of said Section 37 and 1861 ft. E. of NW corner thereof.

22. A gas pipeline Easement, being 6 ft. in width in said Section 37, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 1392 ft. W. of the SE corner of [fol. 125] said Section 37, Blk. 2-T, T. & N. O. RR Survey, thence N. $30^{\circ} 15'$ W., 5950 ft. to E. line of Government property and 137 ft. S. of N. line of Section 37.

23. A drainage ditch easement, 30 ft. in width in said Section 37, Blk. 2-T, T. & N. O. RR Survey, the center line of which is described as:

Beginning at a point 1110 ft. S. of the NE corner of said Section 37, thence N. 62° W., 1640 ft.; thence in

a northwesterly direction to a point on N. line of said Section 37 and 1640 ft. W. of the NE corner thereof.

(A Chart of the above described property is made a part hereof.) (Omitted in printing per stipulation.)

Mr. Blume: I offer in evidence the Assignment and Acceptance, the Assignment being from the Phillips Petroleum Company and the Acceptance being by Phillips Chemical Company.

PLAINTIFF'S EXHIBIT NUMBER TWO

ASSIGNMENT AND ACCEPTANCE

WHEREAS an agreement in writing effective as of 16 August, 1948, executed on behalf of the SECRETARY OF THE ARMY on 22 July 1948 by R. C. Crawford, Major General, Acting Chief of Engineers, and executed on behalf of PHILLIPS PETROLEUM COMPANY, a Delaware corporation [fol. 126] with an operating office at Bartlesville, Oklahoma, on 23 July 1948 by R. C. Jopling, Vice President, provides for the lease of the Government-owned plant near Etter, Moore County, Texas, known as "Cactus Ordnance Works," to the said PHILLIPS PETROLEUM COMPANY, which said agreement in writing, designated Contract No. W-41-038-Eng-6047, and all exhibits attached thereto are made a part hereof with the same force and effect as though they were set forth at length herein; and

WHEREAS attached to said lease as "EXHIBIT C" is an ancillary lease agreement dated 27 July 1948 whereby the said PHILLIPS PETROLEUM COMPANY leases from the United States of America certain Government-owned railroad equipment; and

WHEREAS the aforesaid lease agreement, Contract No. W-41-038-Eng-6047, contains the following recitals, among others, in Condition 11:

"11. That the Lessee shall neither transfer nor assign this lease; nor sublet the Leased Property or any part thereof; nor grant any interest, privilege or license whatsoever in connection therewith without permission in writing from the Division Engineer; provided, however, that with written notice to the Division Engineer the Lessee shall have the right with- [fol. 127] out such permission to assign its rights hereunder to the Phillips Chemical Company, such assignment to be effective for so long as said company remains a wholly owned subsidiary of the Lessee, in which event the liability of the Lessee for performance of the terms and conditions of this lease shall remain unimpaired by such assignment: * * *"

WHEREAS it is the desire of the undersigned PHILLIPS PETROLEUM COMPANY to assign and convey all of its right, title and interest in and under the aforesaid lease agreement and ancillary lease agreement to PHILLIPS CHEMICAL COMPANY, a Delaware Corporation with an operating office at Bartlesville, Oklahoma, and a wholly-owned subsidiary of PHILLIPS PETROLEUM COMPANY;

NOW, THEREFORE, For value received and effective as of the close of business 31 July 1948, the undersigned PHILLIPS PETROLEUM COMPANY hereby assigns all of its right, title and interest in, to and under the aforesaid lease agreement, designated Contract No. W-41-038-Eng-6047, and the ancillary lease agreement thereto attached as EXHIBIT C, unto PHILLIPS CHEMICAL COMPANY and, in consideration of the Government's consent hereto, the undersigned PHILLIPS PETROLEUM COMPANY hereby acknowledges that its liability for performance of the terms and conditions of the aforesaid leases shall remain unim- [fol. 128] paired by this assignment and hereby guarantees the performance by said PHILLIPS CHEMICAL COMPANY of all covenants on the part of the lessee contained in said lease agreements.

In consideration of the foregoing assignment and the Government's consent thereto, PHILLIPS CHEMICAL COMPANY hereby assumes and agrees to make all the payments, perform all the covenants and comply with all the condi-

tions on the part of the lessee contained in the aforesaid lease agreements.

IN WITNESS WHEREOF this assignment and acceptance is executed in quadruplicate, each copy for all purposes to be deemed an original, this 30th day of July, 1948.

ATTEST:

PHILLIPS PETROLEUM COMPANY

/s/ illegible
Assistant Secretary
(SEAL)

By /s/ C. O. STARK
Vice President
ASSIGNOR

APPROVED AS TO FORM

/s/ D. E. HODGES
D. E. Hodges, Atty.

ATTEST:

PHILLIPS CHEMICAL COMPANY

/s/ illegible
Secretary
(SEAL)

By /s/ R. W. THOMAS
Executive Vice President

STATE OF OKLAHOMA)
COUNTY OF WASHINGTON)

Before me, the undersigned authority, on this day per-
[fol. 129] sonally appeared C. O. Stark, known to me to be
the person whose name is subscribed to the foregoing in-
strument and known to me to be the Vice President of
PHILLIPS PETROLEUM COMPANY, a corporation, and acknowl-
edged to me that he executed such instrument for the pur-
poses and consideration therein expressed, and as the act
of said corporation.

Given under my hand and seal of office this 30th day
of July, A. D., 1948.

/s/ E. E. HOLDEN
Notary Public in and for
the County of Washington,
State of Oklahoma.

My commission expires:

7-9-51

STATE OF OKLAHOMA)
COUNTY OF WASHINGTON)

Before me, the undersigned authority, on this day personally appeared R. W. Thomas, known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the Executive Vice President of Phillips Chemical Company, a corporation, and acknowledged to me that he executed such instrument for the purposes and consideration therein expressed, and as the act of said corporation.

Given under my hand and seal of office this 30th day of July, A. D., 1948.

[fol. 130]

/s/ E. E. HOLDEN
Notary Public in and for
the County of Washington,
State of Oklahoma

My commission expires:

7-9-51

JOHN R. POWELL, a witness called to the witness stand by Counsel for plaintiff, being duly sworn, testified on his oath, as follows:

Direct examination.

By Mr. Blume:

Q. Will you state your name, please sir?

A. John R. Powell.

Q. You reside in Dumas, Texas?

A. Yes.

Q. Mr. Powell, have you in the past held the position of Tax Assessor and Collector of the Dumas Independent School District?

A. I have.

Q. What years did you hold that position?

A. From 1931 through '54.

Q. Through the end of 1954?

A. Well, it was August 31, 1954; I believe was the end—

Mr. Langley: We didn't get the answer on that last date. Would you speak louder.

A. It was '55 though instead of '54.

[fol. 131] By Mr. Blume:

Q. Sir?

A. It was '55 instead of '54.

Q. In the year 1954, did you prepare certain assessment sheets on property in the District which you referred to as—commonly known as—Cactus Ordnance Works?

A. I didn't actually prepare them. The attorney for the School district prepared them for me.

Q. Please tell me how that came about; that he prepared them instead of you?

A. Well, I was out of town at the time on vacation.

Q. So, the attorney for the School District wrote up the assessments and made them, did he not; is that your testimony?

A. They were delivered to me; yes; and, they were prepared at the direction of the School Board.

Q. Did those assessments cover the years 1939 through 1945, inclusive?

A. They did.

Q. I wonder if you could identify these as being the assessments or listing?

A. Those appear to be copies of the original; yes.

Mr. Blume: Would mark this as Plaintiff's Exhibit Number Three.

(Received and marked, "Plaintiff's Exhibit Number Three").

[fol. 132] By Mr. Blume:

Q. Do you know whether these copies, which I have shown you, were mailed to Phillips Petroleum Company?

A. Yes. I think I mailed them to the company, in Amarillo.

Mr. Blume: I will offer this in evidence.

Mr. Langley: We object to the introduction in evidence of these copies, which clearly appear to be copies, except for the limited purpose of showing what the assessment sheet looked like when it was originally prepared or for the purpose of showing the condition that a copy was in when it was delivered to Phillips Petroleum Company and, also, for the purpose of showing, of course, that the Phillips Petroleum Company or Phillips Chemical Company received due notice of assessment but not for the purpose of showing that the assessment sheet in such form was the assessment sheet as finally made a permanent record or for the purpose of showing that the assessment sheet in such form was an assessment sheet upon which taxes were finally assessed and put on the tax rolls.

The Court: Are you going to accept those limitations?

Mr. Blume: I don't think he stated any legal reason for his objection, your Honor. I think he named all of the reasons for which I wish to use it but I wouldn't want to be limited to those in the absence of a good reason and I [fol. 133] don't think he has stated a good reason.

Mr. Langley: The best evidence rule is the only one I am attempting to state and I believe that is a good reason.

Mr. Blume: This was introduced as a copy that we received, and, for any such purposes, why, that is the original. Mr. Powell testified to that.

Mr. Langley: No. What I am saying is that for the purpose of showing that it was a copy you received, we have no objection to it; but, we would not want it to be used or attempted to be used for the purpose of showing that a copy that you received became a final public record or the final basis upon which taxes were placed on the tax roll.

Mr. Blume: We expect to introduce the original, if that will satisfy you.

The Court: In the present condition of the record, that is the only thing that that instrument would be worth. In any event, I overrule the objection.

Mr. Langley: Note our exception.

PLAINTIFF'S EXHIBIT NUMBER THREE

ADDITIONAL INVENTORY OF PROPERTY

Dumas, Independent School District

[fol. 134] Owner Phillips Petroleum Company

Address P. O. Box 1751, Amarillo, Texas for assessment of Taxes for the year 1949 by Jno. R. Powell, Assessor Dumas Independent School District, Moore County, State of Texas.

REAL ESTATE

All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

* * * * *

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 77 of this record with the words 'That part of sections . . . ' and ending at page 86 of said record with the words ' . . . of the N.E. corner thereof.'"

* * * * *

[fol. 146]	Total value of the above described realty, including buildings, improvements, fixtures, machinery and appurtenances thereto belonging	\$10,000,000.00
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I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th day of March, 1954, I through my deputy, W. E. Phillips, proceeded to make a list of the property contained in this inventory by calling upon Clay D. Carrithers

agent and employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Amarillo, Texas, and by requesting the said Clay D. Carrithers to render the property contained in this inventory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

/s/ W. E. PHILLIPS

Jno. R. Powell
Assessor and Collector

(If unrendered, Assessor will fill this Certificate)

I, Jno. R. Powell Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this District for the year or years designated, known as the property of Phillips Petroleum Company (if owner is unknown, say unknown) which property has not been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or years 1949 in compliance with the laws regulating the assessment of unrendered property.

JNO. R. POWELL,
Assessor and Collector
Dumas Independent School District

By /s/ E. L. SHEPPARD, Deputy

(SEAL)

ADDITIONAL INVENTORY OF PROPERTY

Dumas Independent School District

Owner Phillips Petroleum Company

Address P. O. Box 1751, Amarillo, Texas for assessment of Taxes for the year 1950 by Jno. R. Powell, Assessor of Dumas Independent School District, Moore County, State of Texas.

All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 78 of this record with the words 'That part of sections . . . and ending at page 86 of said record with the words . . . of the N.E. corner thereof.'"

[fol. 159]	Total value of the above described realty, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging	\$10,000,000.00
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[fol. 160] I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th day of March, 1954, I through my deputy, W. E. Phillips, proceeded to make a list of the property contained in this inventory by calling upon Clay D. Carrithers, agent and employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Ama-

rillo, Texas, and by requesting the said Clay D. Carrithers to render the property contained in this inventory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

/s/ W. E. PHILLIPS

Jno. R. Powell
Assessor and Collector

(If unrendered, Assessor will fill this Certificate)

I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this district for the year or years designated, known as the property of Phillips Petroleum Company (if owner is unknown, say unknown) which property [fol. 161] has not been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or years 1950 in compliance with the laws regulating the assessment of unrendered property.

JNO. R. POWELL,
Assessor and Collector
Dumas Independent School District

By s/ E. L. SHEPPARD, Deputy.

(SEAL)

ADDITIONAL INVENTORY OF PROPERTY

Dumas Independent School District

Owner Phillips Petroleum Company

Address P. O. Box 1751, Amarillo, Texas for assessment of Taxes for the year 1951 by Jno. R. Powell, Assessor Dumas Independent School District, Moore County, State of Texas.

All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 78 of this record with the words 'That part of sections . . . and ending at page 86 of said record with the words . . . of the N.E. corner thereof.'"

[fol. 173]	Total value of the above described realty, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging	\$10,000,000.00
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I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th day of March, 1954, I, through my deputy, W. E. Philips, proceeded to make a list of the property contained in this inventory by calling upon Clay D. Carrithers, agent [fol. 174] and employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Amarillo, Texas, and by requesting the said Clay D. Carrithers to render the property contained in this inventory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

(s) W. E. PHILIPS

Jno. R. Powell
Assessor and Collector

(If unrendered, Assessor will fill this Certificate)

I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this district for the year or years designated, known as the property of Phillips Petroleum Company (if owner is unknown, say unknown) which property has not been listed to me for assessment for the year or years designated and I hereby assess said property for the year or years 1951 in compliance with the laws regulating the assessment of unrendered property.

JNO. R. POWELL,
Assessor and Collector
Dumas Independent School District

By (s) E. L. SHEPPARD, Deputy.

(SEAL)

[fol. 175]

ADDITIONAL INVENTORY OF PROPERTY

Dumas Independent School District

Owner Phillips Petroleum Company

Address P. O. Box 1751, Amarillo, Texas for assessment of Taxes for the year 1952 by Jno. R. Powell, Assessor of Dumas Independent School District, Moore County, State of Texas.

All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

CLERK'S NOTE

Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease

from the United States of America, beginning at page 77 of this record with the words 'That part of sections . . . and ending at page 86 of said record with the words 'of the N.E. corner thereof.' "

[fol. 186] Total value of the above described, realty, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging \$10,000,000.00

I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th. day of March, 1954, I through my deputy, W. E. Phillips, proceeded to make a list of the property contained in this inventory by calling upon Clay D. Carrithers, agent and employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Amarillo, Texas, and by requesting the said Clay D. Carrithers to render the property contained in this inventory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

/s/ W. E. PHILLIPS

Jno. R. Powell
Assessor and Collector

(If unrendered, Assessor will fill this Certificate)

I, Jno. R. Powell Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this district for the year or years designated, known as the property of Phillips Petroleum Company (if owner is unknown, say unknown) which property has not been listed to me for assessment for the year or years designated, and I hereby assess said property for

the year or years 1952 in compliance with the laws regulating the assessment of unrendered property.

JNO. R. POWELL,
Assessor and Collector
Dumas Independent School District

By /s/ **E. L. SHEPPARD,** Deputy.

ADDITIONAL INVENTORY OF PROPERTY

Dumas Independent School District

Owner Phillips Petroleum Company

Address P. O. Box 1751, Amarillo, Texas for assessment of Taxes for the year 1953 by Jno. R. Powell, Assessor of Dumas Independent School District, Moore County, State of Texas.

All of the following described realty, commonly known [fol. 188] as **CACTUS ORDNANCE WORKS**, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging and more particularly described as follows, to-wit:

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 7 of this record with the words 'That part of sections . . . and ending at page 86 of said record with the words 'of the N.E. corner thereof.'"

[fol. 198] Total value of the above described realty, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging \$10,000,000.00

I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th day of March, 1954, I, through my deputy, W. E. Phillips, proceeded to make a list of the property contained in this inventory by calling upon Clay D. Carrithers, agent and employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Amarillo, Texas, and by requesting the said Clay D. Carrithers to render the property contained in this inventory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

/s/ W. E. PHILLIPS

Jno. R. Powell
Assessor and Collector

(If unrendered, Assessor will fill this Certificate)

I, Jno. R. Powell Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this district for the year or years designated, known as the property of Phillips Petroleum Company (if owner is unknown, say unknown) which property has not been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or years 1953 in compliance with the laws regulating the assessment of unrendered property.

Jno. R. Powell,
Assessor and Collector
Dumas Independent School District

By s. E. L. SHEPPARD, Deputy.

ADDITIONAL INVENTORY OF PROPERTY

Dumas Independent School District

Owner PHILLIPS PETROLEUM COMPANY

Address P. O. Box 1751, Amarillo, Texas for assessment of Taxes for the year 1954 by Jno. R. Powell, Assessor of Dumas Independent School District, Moore County, State of Texas.

All of the following described realty, commonly known as CACTUS ORDNANCE WORKS, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 77 of this record with the words 'That part of sections . . . ' and ending at page 86 of said record with the words ' . . . of the N.E. corner thereof.'"

[fol. 209]	Total value of the above described realty, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging	\$10,000,000.00
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I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th day of March, 1954, I, through my deputy, W. E. Phillips, proceeded to make a list of the property contained [fol. 210] in this inventory by calling upon Clay D. Carrithers, agent and employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Amarillo, Texas, and by requesting that the said Clay D. Carrithers to render the property contained in this inven-

tory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

/s/ W. E. PHILLIPS

Jno. R. Powell
Assessor and Collector

(If unrendered, Assessor will fill this Certificate)

I, Jno. R. Powell Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this district for the year or years designated, known as the property of Phillips Petroleum Company (if owner is unknown, say unknown) which property has not been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or years 1954 in compliance with the laws regulating Vol. 211 the assessment of unrendered property.

Jno. R. Powell,
Assessor and Collector
Dumas Independent School District

By S. E. L. SHEPPARD, Deputy.

(SEAL)

By Mr. Blume:

Q. Mr. Powell, do you know whether anyone made any changes on--from this document?

A. Yes, there have been some changes made. The value isn't the same.

Q. The value was lowered. Do you know who did that?

A. The Equalization Board.

Q. Were there any other changes?

A. Well, that original copy was mailed to Phillips Petroleum Company, and the final assessment copies are assessed to Phillips Chemical Company.

Q. Was that done by the Board of Equalization also?

A. Yes.

Q. Do you know when they were made—such changes as you have mentioned?

A. I assume at the Equalization Board meeting?

Q. I will hand you a Delinquent Tax Notice and ask you to state if you can identify that as one you prepared and dispatched to Phillips Chemical Company?

[fol. 212] A. I believe that is mine.

Mr. Blume: Mr. Reporter, would you identify this Delinquent Tax Notice, covering the years 1949 through 1953, inclusive, as Plaintiff's Exhibit Number Four.

(Received and marked, "Plaintiff's Exhibit Number Four").

OFFER IN EVIDENCE

Mr. Blume: I offer it in evidence.

Mr. Langley: No objection.

(Made a part of this record. See Page 160).

By Mr. Blume:

Q. I hand you here an instrument styled 1954 Tax Statement. Will you state whether you prepared this instrument and dispatched this copy to Phillips Chemical Company?

A. I am sure I did; yes.

Mr. Blume: Identify this as Plaintiff's Exhibit Number Five.

(Received and marked, "Plaintiff's Exhibit Number Five").

Mr. Langley: No objection.

(Made a part of this record. See Page 162).

Mr. Blume: I don't have any further questions.

Cross examination.

By Mr. Langley:

Q. Mr. Powell, do you type all of your own assessment sheets or do you have other people type those for you?

[fol. 213] A. Well, I sometimes type them and sometime I had help on it.

Q. Was there anything unusual in this instance about someone else typing those particular sheets for you?

A. No.

Q. Were all of your assessment sheets, including these, prepared under your direction and supervision as a part of the duties of your office?

A. Yes, sir.

Q. Did you have any objection to them the way they were prepared and submitted to you?

A. No, sir.

Q. Did you assess the taxes on the basis of those assessment sheets?

A. Yes, sir.

Q. Send out a tax notice and so forth on the basis of them?

A. Yes, sir.

Q. Did you submit them to the equalization board in your opinion as assessable tax valuations of the property involved?

Mr. Boyd: I believe you are leading the witness.

Mr. Langley: He is your witness.

Mr. Blume: He is an adverse witness on my part.

Mr. Langley: He isn't employed by the defendant school district. You haven't shown any adversity.

Mr. Blume: He was employed by the defendant school district.

[fol. 214] Mr. Langley: He wasn't called for cross-examination and no statement made that he was an adverse witness.

The Court: I don't think whether it is leading or not is of any consequence. Go ahead.

By Mr. Langley:

Q. Is it a fact, Mr. Powell, that from the inception of the determination by the School Board that this property out there, or interest in it, was taxable, from that time forward to the present time that all of the actions of the School Board and Tax Assessor and Board of Equalization have been done at the advice of an attorney?

Mr. Blume: I don't believe you have qualified the witness to answer that question, have you, that all of the actions of the School Board have been done under the direction of an attorney?

Mr. Langley: He can testify to what he knows and you have a right to examine him further into his knowledge.

A. Well, these statements and so forth—all of my actions have been done on the advice of the attorneys and the School Board.

Q. And, were those assessment sheets then your actual bona fide assessment sheets as Tax Assessor and Collector for the Dumas Independent School District?

A. I didn't understand.

[fol. 215] Q. Were those assessment sheets, copies of which you have identified, the actual assessment sheets for yourself, as Tax Assessor and Collector of the Dumas Independent School District?

A. Yes.

Q. I believe you have testified that changes were made in certain parts of those assessment sheets?

A. Yes.

Q. I ask you where the proper place is for keeping the original assessment sheets?

A. Well, in the Assessor-Collector's office.

Q. And, did you place the originals of those copies that have been identified in your office as Assessor and Collector?

A. Yes.

Q. And, did they stay there during the time you were in that office as the incumbent?

A. They did.

Q. Mr. Powell, I will ask you to examine these and see if they are the original assessment sheets that came from your office as Assessor and Collector for the year 1949 through the year 1953?

A. I believe they are.

Q. And, with regard to Plaintiff's Exhibit Number Three, which was previously introduced in evidence, then, are these documents which you have just examined the originals of these carbon copies which were in Plaintiff's Exhibit Number Three for the years 1949 through 1953?

A. I am sure they are.

Q. With regard to the one for 1954, I ask you whether or not on the day of the trial, here earlier this morning, this additional copy was prepared as a substitute for an original which could not be found?

A. It was.

Q. And, I ask you whether or not you participated in a diligent search for the original of this in the office which you have vacated recently?

A. I have.

Q. Did you observe with your own eyes and see, yourself, Mr. Foreman make further search?

A. Yes, sir.

Q. And did you observe Mr. Wooten and the other school officials also make a diligent search for the original of this?

A. Yes, sir.

Q. And, do you know it to be a fact that the original is apparently lost, destroyed or misplaced and cannot at this time be found?

A. That is right.

Q. And then, I will ask you to see if the pencil markings in red on this 1954 copy are the same as were put in red on the original 1954 assessment sheet?

[fol. 217] A. I am sure that it is the same.

Q. And, I will ask you further to see if it is not a fact that the red pencil markings on all of these originals, together with that copy of 1954, were placed on there by the Board of Equalization at a meeting held during August and September, 1954?

A. That is right.

Q. And, in all such cases, the marks were so placed?

A. That is right.

COLLOQUY BETWEEN COUNSEL

Mr. Langley: And, for the purpose of the record, I believe it can be stipulated that in each case and in regard to the original assessment sheets for each of the years in question that on the first page thereof, near the top in the name of the Owner, the word "Petroleum" was stricken and "Chemical" was substituted, thereby making the name of the Owner to be Phillips Chemical Company and that the same change was made in the certificate of the Assessor and Collector on the back of that same original page and that for the year 1949, near the end of the property description, on the stapled together pages attached to the original, the phrase "Except that wholly owned by Phillips Chemical Company" was added to the summary description of the property at the bottom of the page and that the valuation of Ten Million Dollars was [fol. 218.] replaced by a valuation of Three Million One Hundred and Sixty Nine Thousand Seven Hundred and Ninety Dollars; and, for the year 1950, in addition to the general changes with regard to the property description and the same phrase being added, the valuation was changed from Ten Million Dollars to Four Million Five Hundred and Sixteen Thousand Eight Hundred and Ninety Four Dollars; and, that for the year 1951, in addition to the other changes, the same phrase was added.

Mr. Blume: I believe in the record that won't appear clear when you refer to general changes and in addition to the other changes.

Mr. Langley: All right. For each of the years, then let the record show that the Ownership was changed from Phillips Petroleum Company to Phillips Chemical Company in two places and that for each of the five years the phrase "except that wholly owned by Phillips Chemical Company" was added to the general summary of the property description and that for some of the years, being 1949 and 1951, a certain section number was added, to wit:

Section 36, in the very beginning of the property description, which was inadvertently omitted by typographical error and all other changes were in valuation. We showed the changes for 1949 and 1950. Then, for 1951, the change was from Ten Million Dollars to Four Million One Hundred and sixty eight thousand and Ninety One Dollars. For the year 1952, the valuation was changed from Ten Million Dollars to Five Million Three Hundred and Thirty Five Thousand Three Hundred and Eighty Seven Dollars. For the year 1953, the valuation was changed from Ten Million Dollars to Five Million Two Hundred and Thirty Two Thousand Three Hundred and Sixty Six Dollars. And, in addition, for that year, I see in blue pencil a notation, which as far as I am concerned is not necessarily introduced in evidence but appears to be fairly immaterial to this inquiry, the word "tax" is put in there and the figure of \$65,927.81, which as far as I am concerned, was probably not added to the Board of Equalization but is immaterial. The material changes are shown in red pencil. Then, for the year 1954, the valuation was changed from Ten Million to Five Million Three Hundred and Fifty Eight Thousand Five Hundred and Sixteen Dollars.

Mr. Blume: I would agree to that shorthand statement but I would like to introduce as an example of how the changes were made portions of one of the years; that is, I would like to introduce or have you introduce, if you will, this principal part to which the description is attached plus the last page of the description.

Mr. Langley: You mean for the purpose of showing [fol. 226] how it was made?

Mr. Blume: Yes.

Mr. Langley: Is it your intention to incorporate a part of the record photostatic copies of one of these to go with the record?

Mr. Blume: Yes, sir.

Mr. Langley: Just to show the method used in changing?

Mr. Blume: That is right.

Mr. Langley: We have no objection but would prefer that an entire year be introduced in order to keep it from being separated from each other.

Mr. Blumer: That will (see) satisfactory.

Mr. Langley: One year that is already detached from the others in the year 1953, if you have no objection to it, and it would likewise show that figure that I do not particularly care about.

Mr. Blumer: That will be fine.

Mr. Langley: Then, I will ask the Reporter to put as Defendant's Exhibit Number One the Original Assessment Sheet entitled Additional Inventory of Property for the year 1953.

DEFENDANT'S EXHIBIT NUMBER ONE

ADDITIONAL INVENTORY OF PROPERTY DUMAS INDEPENDENT SCHOOL DISTRICT

Chemical
Fol. 221 Owner: Phillips Petroleum Company

Address: P. O. Box 1754, Amarillo, Texas for assessment of taxes for the year 1953 to J. R. Powell, Assessor of Dumas Independent School District, Moore County, State of Texas.

All of the following described lands, commonly known as Cactus Oil Lease Works, including buildings, improvements, fixtures, machinery, and appurtenances thereto, belonging, and more particularly described as follows, to-wit:

Cactus Oil Lease

Here below approximately ten pages of legal descriptions of seven tracts of land and twenty three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 37 of this record with the words "That part of sections 1 and ending at page 80 of said record with the words "of the N.E. corner thereof."

fol. 233: Total value of the above described realty, including buildings, improvements, fixtures, machinery and appurtenances, the same belonging \$ 5,232,366.
~~\$10,000,000.00~~

Except that wholly owned by Phillips Chemical Company
 Tax 65,327.81

I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that on the 24th day of March, 1954, I, through my deputy, W. E. Phillips, proceeded to make a list of the property contained in this inventory by calling upon Clay D. Carrithers, agent and fol. 234 employee of Phillips Petroleum Company, and head of the tax division for Phillips Petroleum Company at his office in the First National Bank Building of Amarillo, Texas, and by requesting the said Clay D. Carrithers to render the property contained in this inventory for the designated year, and to make statement under oath as required by law. The said Clay D. Carrithers refused on behalf of the Phillips Petroleum Company to render the property contained in the inventory for tax purposes or to swear to the same on the said date.

s. E. E. Phillips

Jno. R. Powell
 Assessor and Collector

If untendered, Assessor will file this Certificate

I, Jno. R. Powell, Assessor and Collector of Dumas Independent School District, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this district for the year or years designated.

Chemical
 known as the property of Phillips Petroleum Company, if owner is unknown, say unknown which property has not been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or

years 1953 in compliance with the laws regulating the assessment of unimproved property.

John R. Powell, Assessor and
Collector, Dumas Independent School
District

By (s) E. L. Sheppard, Deputy

(SEAL)

Cross examination (continued).

By Mr. Langley:

Q. I hand you, Mr. Powell, a large bound volume and ask you to tell me what it is, please?

A. Those are the tax rolls for several years.

Q. For what taxing authority purposes?

A. Dumas Independent School District.

Q. Were those prepared by you or under your direction during the time that you were Tax Assessor and Collector?

A. They were.

Q. What years are bound within that bound volume, please, sir?

A. '49 through '54.

Q. I ask you then if those are the years that we have been discussing here in Court?

A. They are.

Q. Now, I want to hand you these original assessment sheets that have been introduced in evidence, with the exception of 1953, and ask you if you will take each of these assessment sheets and take them to the place, Vol. 230, in your tax office where those taxes were placed on the rolls for each of the years in question. Now, you have before you the roll for the year 1954 and you are comparing it with the assessment sheet for 1953 and do you find the same valuation figure?

A. I do.

Q. And, who is shown on the tax rolls to be the person against whom that tax is assessed?

A. Phillips Chemical Company.

Q. Does it have under that "Cactus Ordnance Works"?

A. It does.

Mr. Blume: I think that I will want you to read the entire entry into the record if you are going to handle it that way.

By Mr. Langley:

Q. Mr. Powell, will you take those assessment sheets that we looked at and for each year turn to the page on the tax rolls where that assessment was entered on the roll and read the full entry that you find in each instance, giving the year for which you find it; give the valuation and how it was put on the roll and the amount of taxes due and so forth?

Mr. Blume: I have an objection that you haven't shown the rolls to be properly certified.

Mr. Langley: All right.

By Mr. Langley:

Q. Mr. Powell, in the first place, are you now in the 1954 fol. 237 roll?

A. Yes, sir.

Q. And, is that roll certified by you as Tax Assessor and Collector as being the properly completed and certified roll for the Dunbar Independent School District for the year 1954?

A. It is.

Q. Then, will you turn to the—

Mr. Blume: I don't believe you have covered the certification by the Board of Equalization and approval of the roll.

Mr. Langley: The Statute does not require that the roll be signed by the Board of Equalization.

Mr. Blume: What?

Mr. Langley: The Statute does not require that the roll be signed by the Board of Equalization.

Mr. Blume: That is your conclusion.

Mr. Langley: That is what the Statute says. It says approved but doesn't say signed.

Mr. Blumer: Have you proved an approval of the roll?

By Mr. Langley:

Q. Was that roll approved by the Board of Equalization for the Dunbar Independent School District prior to the time you approved that roll as being correct?

A. Yes, sir. They arrived at the figures we would use for the basis of the assessment and the tax rate and those were computed and placed on the tax roll.

[fol. 238] Q. And, was the roll approved by the Board of Equalization after the roll was typed?

A. Well, no, not formally, I don't think, or, I don't know that it was.

Q. I ask you if you have a certificate on here signed by the Board of Equalization?

A. I do have a certificate signed by the Board of Trustees.

Q. And, as to the Board of Equalization, you are not sure about that?

A. No.

Q. Does the Board of Equalization customarily approve your tax rolls each year?

A. No, I don't think they have ever been formally approved by the Board of Equalization. I certify that I have prepared this roll and the assessment in accordance with the tax rate and the values adopted.

Q. In accordance with the valuation put on the property by the Board?

A. Yes, sir.

Q. Was that roll for 1954 so done and so entered by you?

A. It was.

Mr. Langley: Is it your contention that that is still not sufficient?

Mr. Blumer: I still object to its admission.

By Mr. Langley:

Q. I ask you, Mr. Powell, if that roll was submitted to [fol. 239] and approved by the Board of Trustees?

A. Yes, sir, it has been.

Q. And, I ask you whether or not the Board of Equaliza-

tion was composed of three members of the Board of Trustees?

A. It is.

Q. And then, I ask you whether or not the members of the Board of Equalization all joined in the approval of that roll?

A. Well, we have Homer Foreman, Byron Smith, George Murphy and Carl Troutman who signed it.

Q. Were the members of the Board of Equalization Carl Troutman, George Murphy and Homer Foreman?

A. Yes, sir.

Q. And did they approve that roll then?

A. Yes, they have.

Q. Then, will you turn to that entry that we have talked about?

A. Yes.

Mr. Langley: I believe that is sufficient.

Mr. Blumer: I will accept that for the year 1954.

A. This is in the name of Phillips Chemical Company and below that, in parentheses, "Cactus Ordnance Works, that part of Sections 20, 28, 29, 36, 37 and 38, Block 2 T, T. & N.O. RR Survey, Moore County, Texas, 1538.31 acres, more or less, including buildings, fixtures, machinery, improvements and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company, Value Five Million Three Hundred and Fifty Eight Thousand, Five Hundred and Sixteen Dollars, total taxable property, the same value, and total tax Sixty Seven Thousand Five Hundred and Seventeen Dollars and Thirty Cents" and when paid is blank.

Q. Mr. Powell, I ask you then if that is the official original tax roll for the Dumas Independent School District for that year?

A. It is.

Q. Showing that there has been levied and assessed against Phillips Chemical that amount of taxes on that property?

A. That is right.

Q. On the interest of the Phillips Chemical Company in that property?

A. That is right.

Q. Now then, will you turn to the year 1953?

Mr. Langley: I might ask Counsel if they will stipulate as to asking the same question that none of the taxes shown on that roll have been paid; that is, that particular entry of taxes for each of these years - the taxes in question, in other words?

Mr. Blume: We will stipulate that we have paid none of the taxes which are the subject matter of our petition.

[fol. 241] Mr. Langley: That is all that I am after. In other words, it is my understanding that these taxes are the subject matter of our lawsuit and I think they have not been paid in fact and I think, in the interest of saving time, I think we can stipulate that these particular entries on these particular assessment sheets, as reflected in the tax roll, have not been paid.

Mr. Blume: We will stipulate that we have not paid those particular entries.

By Mr. Langley:

Q. On the 1953 tax rolls - first, Mr. Powell, was that roll likewise approved the same way and manner that the 1954 roll was approved?

A. I don't have the signatures of the Trustees on that.

Q. You don't have the signatures. Was the roll, in fact, approved by the Board of Equalization or the School Board comprising the Board of Equalization?

A. Yes, sir.

Q. And, did you personally secure that approval from the Board of Trustees?

A. Yes, sir. I have notified them that I have the tax roll ready and the statements are going out.

Q. And, has it been your practice over the years - you were Tax Assessor and Collector, by the way; for how many years?

A. About twenty four years.

Q. And, has it been your practice and have you worked [fol. 242] with the Board during those years so that they have approved your roll in that way and manner in some years?

A. Yes, sir, they have.

Q. And, has there been any objection raised by any member of the Board to the roll?

A. No.

Q. And, are there a number of years during the twenty-four years that you were Assessor and Collector that your signature alone appeared on the certificate of approval?

A. That is right.

Mr. Langley: Do you have any objections?

Mr. Blume: I object that the roll which is shown to be a supplemental roll is not shown to have been approved by the Board. Mr. Powell didn't testify that it had. He just said they didn't disapprove it as far as he knew and there is no certificate of any sort on it by Mr. Powell or anyone else.

By Mr. Langley:

Q. I will ask you this question: Were these taxes for the year 1953 done and approved by the Equalization Board that met in 1953?

A. Yes, sir.

Q. These particular ones that we are talking about here?

A. This—no—this particular assessment.

Q. Was approved by what Equalization Board?

A. The Equalization Board of '54.

fol. 243] Q. And, the one we have already testified

A. All of these prior years have been approved but they were made by the Board of Equalization for the year 1954.

Q. And, whether or not the Board of Equalization for the year 1953 or the year '52 or the other prior years signed the roll makes no difference as to these particular taxes since they were done in 1954?

A. That is correct.

Mr. Langley: Do you still object?

Mr. Blume: I don't think he has testified to a certification or approval by the 1954 Board, did he?

Mr. Langley: Yes, sir. He testified that those members of the Board signed that 1954 roll and that they thereby approved it. They signed it in 1954.

A. In the year 1954 all of these assessments for the prior years were made.

Q. Let me ask you if all of these entries in the prior years were in the books when this was approved by the members that you have testified about—all of these other entries we have talked about here were so approved?

A. I don't remember exactly when I put these entries on here but it was after the Board met last in '54, you see, and these assessments had been made at that time.

Q. What is the date of this approval?

A. November 22nd.

[fol. 244] Q. What year?

A. 1954.

Q. And, was that after all of these taxes off of the assessment sheets we have been talking about were put on the roll?

A. Yes, sir.

Q. They were all in this book and put on the rolls by the same board at the same time?

A. Yes, sir. After you arrived at these final values, I put each of those entries on the tax rolls for that particular year.

Mr. Blume: I object to this line of questions because the certificate is limited to the tax roll for the year 1954.

The Court: Overrule the objection.

By Mr. Langley:

Q. Go ahead and testify now as to the entry for 1953?

A. "Phillips Chemical Company, parts of Sections 20, 28, 29, 36, 37 and 38, Block 2-T, T. & N.O. RR Survey, Moore County, containing 153.34 acres, more or less, commonly known as Cactus Ordnance Works, including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company.

Mr. Blume: Will you state the Column Heading?

A. Personal property. "Value Five Million Two Hundred and Thirty Two Thousand Three Hundred and Sixty [fol. 245] Six Dollars. Total taxable property the same.

total tax, Sixty Five Thousand Nine Hundred and Twenty Seven Dollars and Eighty One Cents."

Q. Now, will you go to the year 1952?

Mr. Blume: I take it we may have our same objection to the introduction of that?

The Court: Yes, sir.

A. "Phillips Chemical Company, parts of Sections 20, 28, 29, 36, 37 and 38, Block 2-T, T. & N.O. RR Survey, Moore County, Texas, containing 1538.31 acres, more or less, (commonly known as Cactus Ordnance Works) including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company" and, in the personal Column, "Five Million Three Hundred and Thirty Five Thousand Three Hundred and Eighty Seven Dollars, total taxable property the same; total tax Fifty Three Thousand Three Hundred and Fifty Three Dollars and Eighty Seven Cents."

Q. Go to the year 1951?

Mr. Blume: Same objection.

The Court: Overrule the objection.

A. "Phillips Chemical Company, parts of Sections 20, 28, 29, 36, 37 and 38, Block 2-T, T. & N.O. RR Survey, Moore County, Texas, containing 1538.31 acres, more or less (commonly known as Cactus Ordnance Works) including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company" and in the Personal Column

Mr. Blume: State the heading of the column?

A. Personal Property, "Four Million One Hundred and Sixty Eight Thousand and Ninety One Dollars; total taxable property, Four Million One Hundred and Sixty Eight Thousand and Ninety One Dollars; total tax Forty-One Thousand Six Hundred and Eighty Dollars and Ninety One Cents."

Q. Now, then, will you go to the year 1950?

Mr. Blume: Same objection.

The Court: Overruled.

A: "Phillips Chemical Company, parts of Sections 20, 28, 29, 36, 37 and 38, Block 2 T. T. & N.O. RR Survey, Moore County, Texas, containing 1538.31 acres, more or less, commonly known as Cactus Ordnance Works including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company, Personal Property, Four Million Five Hundred and Sixty One Thousand Eight Hundred and Ninety Four Dollars; Total taxable property, Four Million Five Hundred and Sixteen Thousand Eight Hundred and Ninety Four Dollars; Total tax Forty Five Thousand One Hundred and Sixty Eight Dollars and Ninety Four Cents."

Q. Go to the year 1949, please?

(fol. 217) Mr. Blume: Same objection.

The Court: Overruled.

A: "Phillips Chemical Company, Parts of Sections 20, 28, 29, 36, 37 and 38, Block 2 T. T. & N.O. RR Survey, Moore County, Texas, containing 1538.31 acres, more or less, commonly known as Cactus Ordnance Works including building, improvements, fixtures, machinery, and appurtenances, thereto belonging, except that wholly owned by Phillips Chemical Company, Personal Property Three Million One Hundred and Sixty Nine Thousand Seven Hundred and Ninety Dollars; total taxable property, Three Million One Hundred and Sixty Nine Thousand Seven Hundred and Ninety Dollars; total tax Thirty One Thousand Six Hundred and Ninety Seven Dollars and Ninety Cents."

Mr. Eargle: No further questions.

Redirect examination.

By Mr. Blume:

Q. Would you state the Caption on the sheet on which the certificate we were discussing appears for the year 1954 so that we may identify it properly?

A. Recapitulation, Entire Roll, 1954, Real and Personal Property Rendered for Taxation for the year 1954.

Q. That is a sheet on which your certificate and the Trustees' Certificate appears, is it not?

A. It is.

[fol. 248] By Mr. Boyd:

Q. Mr. Powell, I would like to ask you some questions now concerning the assessment sheets for the years 1949 through 1954, inclusive, and I believe that you testified that the assessment sheets were prepared by attorneys of the School District; is that correct?

A. That is correct.

Q. And, if I understand you correctly, then, the assessments were not made by you?

A. Well, I put the assessment sheets in with the other assessment sheets, you see—

Q. In other words, after the assessment sheets were made up, then, in preparing the tax rolls from the assessment sheets, you put them all in alphabetical order and transcribed them to the rolls?

A. That is right.

Q. But, the assessments weren't made by you?

A. No, I didn't actually make up that assessment sheet.

Q. Now, in examining the assessment sheet, for instance, for 1954 we see the original value placed thereon was Ten Million Dollars and the value as changed by the Board of Equalization is Five Million Dollars plus and that value is set opposite a description as follows: "All of the following described realty, commonly known as Cactus Ordnance Works, including buildings, improvements, fixtures, machinery and appurtenances thereto be [fol. 249] long and more particularly described as certain tracts and including easements and concluding with the total value of the above described realty, including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company; is that value set forth there then the assessed value on the property described on the sheet would that be your understanding?

A. That is the assessed value of all property described on this sheet from here through here. (Indicating).

Q. Yes, sir?

A. That is all of this property that is described in detail here. It has a final value of this. (Indicating).

Q. Now, is it your understanding, from reading that, that that is the full fee assessed value for this property particularly described here?

A. Yes, for all the property that is described on here, except that wholly owned by Phillips Chemical Company.

Q. And then, I believe we could conclude from that that the leasehold of Phillips Chemical Company is not described on this sheet, is it?

A. Well, I don't know.

Q. You wouldn't consider this description as describing the leasehold of Phillips Chemical Company?

Mr. Langley: We object to that question on the ground [fol. 250] that it is leading and for the further reason that the assessment sheet speaks for itself and doesn't need any interpretation.

The Court: I sustain the objection on the ground that the instrument speaks for itself.

Mr. Langley: If the witness answered, we would like to move that his answer be stricken. I am not sure. I didn't hear his answer. If he did, we want his answer stricken from the record.

The Court: All right.

A. I don't believe I answered that question.

By Mr. Boyd:

Q. Let me ask you this question then: Mr. Powell, if you had been making the assessment yourself and had been intending to place a value on the full fee value of the property particularly described here, would you have done it exactly as it is done on this sheet?

A. Well, I don't know how I would have described it because I didn't have this detailed description of all of the property out there.

Q. But, if you had a detailed description and had that description attached on here and wanted to assess that

described property at its full fee value, then, would you have put the value out here and left the description of the property as it is?

A. Well, I don't know whether I would have or not. (fol. 251.) Q. How would you have changed it?

A. If I had been doing it I would have probably had a lot more brief a description than there is here but it wasn't done that way. I didn't prepare the assessment sheet the description of the property.

Q. And, if you had been intending to describe a leasehold of Phillips Chemical Company in this property, would you not have specified that on the sheet?

A. I don't know that I would have.

Q. Why?

A. Well, I haven't had that decision to make in the matter.

Q. Now—

A. And, I didn't prepare this.

Q. I understand that but we are trying to find out wouldn't it have been logical?

Mr. Langley: That certainly calls for a conclusion of the witness on a highly speculative matter and the witness hasn't been shown qualified to answer and that goes into the realm of speculation which is beyond the scope of legitimate examination.

The Court: I don't think the witness could bind either party as to what he would have done. I sustain the objection.

By Mr. Boyd:

Q. Let me ask you this, Mr. Powell: In looking at this sheet, do you consider that the value placed on this sheet (fol. 252) is the full fee value of the property described was it put on there for that purpose?

Mr. Langley: Again, Your Honor, we object because it is not shown that this witness knows what the Board of Equalization had in mind when they put it on there.

The Court: I sustain the objection.

By Mr. Boyd:

Q. Is it my understanding, Mr. Powell, that you had nothing to do with the preparation of this assessment, although your certificate here on the back says that it was prepared at your instance; that is not true; is that right? It was not prepared as a function of your office; is that right?

A. It was prepared as a function of my office, just like

Q. It wasn't prepared by you?

A. No, it wasn't.

Q. And, you don't understand anything about it; you don't understand the rendition sheet at all?

Mr. Langley: We object to him intimidating his own witness and leading his witness and testifying for him.

Mr. Boyd: I am simply trying to ascertain if he knew nothing about it as you say he did.

Mr. Langley: We object on the ground that you are testifying for your witness.

The Court: I will sustain it on the basis of being argumentative.

Mr. Blumer: I would like to ask a few questions with leave of Counsel. I know it is improper to have two attorneys question the same witness but it will save a middle man.

Mr. Langley: All right.

By Mr. Blumer:

Q. Did you direct what property was to be put on the assessment lists?

A. I don't know that I fully understand your question.

Q. Did you specify which property was to go on the assessment lists prepared or did someone else do that?

A. No; I make up the list of all property.

Q. Did you specify the property which was to be included on the assessment list prepared?

A. No, it wasn't my decision to put that on there. The Board of Trustees decided that that assessment should be made against the Phillips Chemical and I carried through from there as to the matter of putting it on tax rolls.

Q. Then, you didn't specify which property was to be listed?

A. I didn't specify that particular property; no.

Q. Did you specify the value to be put on the property?

A. No.

Mr. Blume: I would like to move that all of the Original Assessment Sheets introduced by the Defendants be [fol. 254] stricken as not being official acts of the School District and not being properly introducible in this cause because it is shown that Mr. Powell abdicated his functions and didn't perform the functions of his office from the questions submitted.

The Court: Overruled.

By Mr. Blume:

Q. I believe you have testified that you didn't add any of the language to the original assessment sheets, have you not?

A. No. I suppose that the attorneys or the Board of Equalization and the attorneys for the School District added that additional language down there.

Q. Therefore, you wouldn't attempt to be in a position to know what the language added means; would you?

The Court: Do you understand his question?

By Mr. Blume:

Q. I am referring in particular to the addition "Except that wholly owned by Phillips Chemical Company." Do you know what was intended by that language?

Mr. Langley: The witness has testified that that was added by the Board of Equalization and I don't know why he should be called upon to say why they added it or what they meant. The instrument speaks for itself.

The Court: I believe it would be material as to what his understanding of it is and I sustain the objection.

[fol. 255] Mr. Blume: That is all.

Recross examination.

By Mr. Thomas:

Q. Mr. Powell, is it true that you were instructed by the Board of Trustees for the Dumas Independent School District to cooperate with their attorneys in the preparation of this assessment for each of these five years, 1949 through 1954?

A. Yes. That is correct.

Q. And, were these assessments which you have testified about, pertaining to the years 1949 through 1954, prepared under your direction and supervision as Tax Assessor and Collector of the Dumas Independent School District?

A. They—will you—

Q. Were they prepared under your direction and supervision for you and on your behalf as Tax Assessor and Collector?

A. Yes.

Q. And, when you say you didn't prepare them you mean by that, I take it, that you didn't do the typing yourself?

A. No, I didn't. All that description and the typing, I done none of it.

Q. And, if they were prepared under your direction and supervision, were they a product of your office or function of your office?

A. Yes, they were.

Mr. Blume: That calls for a conclusion, I believe.

(fol. 256) By Mr. Thomas:

Q. Now, Mr. Powell, you were asked awhile ago as to whether or not you gave any instructions as to what property was to be assessed and I will ask you this question: Did you at any time direct and was it under your supervision that the so-called Cactus Ordnance Works was assessed?

A. Yes.

Q. When you answered the question awhile ago, were you referring to the detailed legal description which you did not give?

A. I did not give; no.

Q. But, did you refer to it as the Cactus Ordnance Works or the Cactus Ordnance Plant?

A. Yes.

Q. And, that was so prepared under that direction, was it not?

A. Yes. The renditions were prepared and delivered to me.

Q. And, is it true that the source of that detailed legal description was from the Phillips Chemical lease; do you know that for a fact?

A. Well, I assumed that that is where the information came from.

Q. When you, Mr. Powell, signed each of these assessment sheets for the years 1949 through 1954, did you intend thereby, as Tax Assessor and Collector, to assess [fol. 257] those taxes against the Phillips Chemical Company?

A. Well, I didn't actually sign them.

Mr. Blume: I have an objection. I don't believe that you have established that he signed those and, in fact, I don't see that he did.

A. They were signed by Sheppard in the office.

By Mr. Thomas:

Q. Was Sheppard a Deputy Tax Assessor and Collector for the Dumas Independent School District?

A. He has helped me in the tax work for a number of years.

Q. And, was he during the year 1954 serving as a Deputy Tax Assessor and Collector?

A. He worked all the time or did each year—he worked, helping me assess and collect the taxes—worked them up in detail in assessing the ownerships.

Mr. Thomas: That is all.

Redirect examination.

By Mr. Blume:

Q. I don't believe your answer was clear. Did M. Sheppard work as Clerk or as a Deputy?

A. Well, he is a Clerk I presume. I have no the law creating a district doesn't provide for any deputy collectors. It just provides for an Assessor and Collector and that was done in my absence. I was out of town at the time these were delivered and Sheppard signed them and, of course, that was with my approval. Had I been there, [fol. 258] I would have signed them.

Mr. Blume: I move that we strike these, again. Your Honor, on the additional ground presented here that they were not made by Mr. Powell or by his deputy but by a clerk.

The Court: What is the plaintiff trying to enjoin.

Mr. Blume: The attempt to collect taxes.

The Court: I don't believe there is any issue here made as to the handling of the tax rolls.

Mr. Blume: We have one issue that they have not is more or less a subsidiary issue and I apologize your Honor for taking so much time but we do have one issue that there was never a proper assessment and I say subsidiary only in the sense that it would invalidate these particular assessments, whereas our other issues that we are trying would perpetually enjoin the assessment.

Mr. Langley: For the purpose of the record, I might as this one question.

By Mr. Langley:

Q. Did Mr. Sheppard have the authority from you to sign those assessment sheets as he did?

A. Yes, sir. He had authority to do anything necessary in the office.

Q. Was he acting within the scope of his authority from you in signing them?

[fol. 259] A. Yes.

Q. Was his signature, in effect, your signature?

A. Yes. It was just as good as if I had signed it.

Q. Was he acting for you in your absence from town as Tax Assessor?

A. Yes, sir.

Q. As your authorized substitute?

A. Yes, sir.

Q. Is there any difference, in your opinion, between his signature on there and your own signature, if you had been in town?

A. No, not in my opinion, because he has always—since he has been there and since I have been collecting taxes, he has worked with me.

Q. How many years did he work for you altogether?

A. Six or seven years, I guess.

Q. And, during all of that time, did he sign assessment sheets?

A. He did whatever was necessary.

Q. And, tax notices?

A. Yes, sir.

Q. And, tax receipts?

A. Yes, sir.

Q. And, signed Jno. R. Powell?

A. By Sheppard; and other employees in any office have [fol. 260] done the same.

Mr. Blume: Since we have this issue in the case, I wouldn't want to waive it and I would ask you to rule on my objection.

The Court: I overrule the objection.

Mr. Blume: We have no more questions from Mr. Powell.

Mr. Langley: No further questions.

(Witness excused).

HOMER FOREMAN, a witness called to the witness stand by Counsel for Plaintiff, being duly sworn, testified on his oath, as follows:

Direct examination.

By Mr. Blume:

Q. Will you state your name, please, sir?

A. Homer Foreman.

Q. Do you have any official capacity with the Damas Independent School District at present?

A. Just Tax Assessor and Collector.

Q. What capacity did you hold in 1954?

A. I was a member of the Board.

Q. Were you also a member of the Board of Equalization?

A. Yes, sir.

Q. Did you attend and participate in a certain meeting on or about August 9, 1954, wherein there was considered [fol. 261] certain assessments against what is commonly referred to as the Cactus Ordnance Works?

A. Yes, sir.

Q. Was considerable testimony introduced at that hearing regarding the value of the Cactus Ordnance Works?

A. Yes, sir. I think there was quite a bit on both sides.

Q. What was the nature of that testimony; was it directed at an ascertainment of the full market value of the Cactus Plant?

A. I don't know if I got your question just right.

Q. What was valued there was the full interest in the Cactus Ordnance Works, was it not; not just a leasehold interest. That was the nature of the testimony introduced, was it not?

Mr. Langley: That is a leading question, Your Honor, and we object to it for that reason.

Mr. Blume: I believe this is an adverse witness, Your Honor, and I am entitled to lead him.

The Court: I am not sure about that point and I have a question about the admissibility on other points. I overrule the objection.

Mr. Langley: We object for the further reason that the testimony before the Board of Equalization would be the best evidence of what it was--what it was designed to be--and that the opinion of this witness at this time, more than two years later, as to what the object of the [fol. 262] testimony was and what was attempted to be ascertained would be a mere conclusion and opinion and, likewise, on the grounds of relevancy, because of the fact that the valuation question is supposed to be specifically excluded from this hearing today.

The Court: Let's hear the question again before we discuss it further.

.. (The reporter read the last question asked).

Mr. Blume: In reply to the objection, we are not attempting to go into the valuation as such. We are just trying to show that what was actually assessed was the fee value and that the fee was assessed and the testimony at the Board of Equalization is significant as to what was assessed.

The Court: I doubt whether that testimony would be material here and whether it could be developed in this way. I will sustain the objection.

Mr. Blume: Note our exception; and, if your Honor is excluding the testimony entirely, we will want to take a bill of exceptions to show what he would have testified to.

The Court: As I remember the question it was what the nature of the testimony was there before the Board of Equalization and I will let the ruling stand. You can [fol. 263] go ahead and develop further testimony from him for the purpose of your record.

[fol. 264] (Witness excused).

Mr. Blume: That is all of our bill of exception.

By Mr. Blume:

Q. I hand you a letter, Mr. Foreman, and ask you if that is your signature on it?

A. Yes, sir.

OFFER IN EVIDENCE

Mr. Blume: I would like to introduce this letter in evidence. I will introduce only the second paragraph.

[fol. 265] Mr. Thomas: We are going to object to this on the same grounds; that it is completely immaterial and irrelevant. I assume that it is being offered to have some bearing on the legal interpretation of the assessment, as to whether or not the Board of Equalization attempted to assess the fee simple or the leasehold interest and, again, we take the position that that is a matter of interpreting the instrument itself—the assessing for each year—and I don't see how a letter or any other instrument signed at any other time by any member of the Board of Equalization would have any bearing.

Mr. Blume: We think it is an admission by a party that they taxed the fee instead of the leasehold.

The Court: I will sustain the objection.

Mr. Blume: Note our exception.

PLAINTIFF'S EXHIBIT NUMBER SEVEN

September 18, 1954

Phillips Chemical Company
Box 1751
Amarillo, Texas

Attention: Tax Department

Dear Sirs:

(Paragraph 1 not offered):

You are also notified that the Board of Equalization [fol. 266] has found that your property, commonly referred to as the Cactus Ammonia Plant or Cactus Ordnance Works, is taxable for the years 1949 through 1954, and that the assessed values have been fixed by the Board for each of the said years. You may also appear on said

date and at said place to present any additional evidence you may have pertaining to such property.

s/ George Murphy
s/ Homer Foreman
s/ Carl Troutman

BOARD OF EQUALIZATION OF THE DUMAS
INDEPENDENT SCHOOL DISTRICT

(Following Rubber Stamped Printing
Appears on Said Exhibit)

RECEIVED
SEP 22 1954
TAX DEPT
AMARILLO, TEXAS

The Court: Let's take a fifteen minute recess.

After Recess

Mr. Blume: That is all the questions we have for Mr. Foreman.

Cross examination.

By Mr. Langley:

Q. You are Homer Foreman and you were on the stand [fol. 267] just before the recess and you are the duly constituted and acting Tax Assessor and Collector of the Dumas Independent School District now?

A. Yes, sir.

Mr. Langley: I ask you to mark this, please, as Defendant's Exhibit Number Two.

(Received and marked, "Defendant's Exhibit Number Two").

By Mr. Langley:

Q. Mr. Foreman, I hand you Defendant's Exhibit Number Two and ask you if that is the Additional Inventory

of Property comprising the assessment sheet for the Cactus Ordnance Works as assessed to Phillips Chemical Company for the year 1953?

A. Yes, sir.

Q. And, if it contains, attached to it, a property description similar to that or identical with that found on the other assessment sheets for the prior years 1949 through 1954?

A. Yes, sir.

Q. And, I ask you if it is not true that at the end of the description that a total value of the above described realty, including buildings, improvements, fixtures, machinery and appurtenances thereto belonging (except that wholly owned by Phillips Chemical Company) is Ten Million Dollars?

A. Yes, sir.

[fol. 268] Q. Was that assessment prepared by you, or under your direction in your office?

A. Yes, sir.

Q. That was prepared in your office under your direction or by you?

A. Yes, sir.

Q. And, did it constitute the assessment of the interest of Phillips Chemical Company in the Cactus Ordnance Works for the year 1955?

A. Yes, sir.

Q. Was that assessment presented to the Board of Equalization for the Dumas Independent School District for the year 1955?

A. Yes, sir.

Q. What did they do to the Ten Million Dollar valuation that you had placed on the assessment?

A. Well, they reduced it to this figure here.

Q. Which was?

A. Five Million Three Hundred and Fifty Eight Thousand Five Hundred and Sixteen Dollars.

Q. And, was that figure placed on your tax roll?

A. Yes, sir.

Q. Can you find the place in your 1955 tax roll where it was placed?

A. Yes, sir.

[fol. 269]. Q. That is Page what, now?

A. Page 73.

Q. And, read the roll as it pertains to that property, please, sir?

A. "That part of Sections 20, 28, 29, 36, 37 and 38, Block 2-T, T. & N.O. RR Survey, Moore County, Texas, 1538.51 acres, more or less, including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, except that wholly owned by Phillips Chemical Company—"

Q. Before you go ahead, let me ask you this:—What name is that assessed in, please?

A. Phillips Chemical Company.

Q. And then, the next entry is a figure; is that correct?

A. Yes, sir.

Q. And, is that in the Value Column?

A. Yes, sir.

Q. And, what is that figure?

A. Five Million Three Hundred and Fifty Eight Thousand Five Hundred and Sixteen Dollars.

Q. And, the next entry is the same figure in the Total Taxable Property Column?

A. Yes, sir.

Q. And then, what does the total Tax Column show?

A. Sixty Four Thousand Three Hundred and Two Dollars and Nineteen Cents.

[fol. 270] Q. Have those taxes been paid?

A. No, sir.

OFFER IN EVIDENCE

Mr. Langley: We want to offer in evidence this assessment sheet, Defendant's Exhibit Number Two.

DEFENDANT'S EXHIBIT NUMBER TWO

ADDITIONAL INVENTORY OF PROPERTY DUMAS INDEPENDENT SCHOOL DISTRICT

Owner Phillips Chemical Company

Address Box 1751, Amarillo, Texas and rendered assessment of Taxes for the year 1955 by
 to Jno. R. Powell, Assessor of Dumas Independent School District, Moore County, State of Texas.

All of the following described realty, commonly known as Cactus Ordnance Works, including buildings, improvements, fixtures, machinery, and appurtenances thereto belonging, and more particularly described as follows, to-wit:

CLERK'S NOTE

"Here follows approximately ten pages of legal descriptions of seven tracts of land and twenty-three easement areas, being identical to the descriptions found in the lease from the United States of America, beginning at page 76 of this record with the words 'That part of sections ... and ending at page 86 of said record with the word ... of the N.E. corner thereof.'"

[fol. 282]	Total value of the above described realty, including buildings, improvements, fixtures, machinery and appurtenances thereto belonging (except that wholly owned by Phillips Chemical Company)	\$10,000,000.00
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(If unrendered, Assessor will fill this Certificate)

I, Homer Foreman, Assessor and Collector of Dumas Independent School District, do hereby certify that this

inventory contains a true and correct list of property subject to taxation in this district for the year or years designated, known as the property of Phillips Chemical Company (Cactus Ordnance Works) (if owner is unknown, say unknown) which property has not been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or years 1955 in compliance with the laws regulating the assessment of unrendered property.

Jno. R. Powell, Assessor and
Collector Dumas Independent School District

By (s) Ovelle Cagle, Deputy.

(SEAL)

[fol. 283] Mr. Langley: That is all.

Redirect examination.

By Mr. Blume:

Q. Do you know when this assessment was made?

A. When it was made?

Q. Yes, sir?

A. No, I wouldn't know the exact date.

Q. Would you know the approximate date?

A. No.

Q. You would not know even approximately?

A. Just whenever we come to it, when we are making up the inventory sheets.

Mr. Blume: No more questions.

Mr. Langley: No further questions.

(Witness excused).

CARL TROUTMAN, a witness called to the witness stand by Counsel for the plaintiff, being duly sworn, testified on his oath, as follows:

Direct examination.

By Mr. Blume:

Q. Would you state your name, please?

A. Carl Troutman.

Q. Are you a member of the Board of Trustees of the Dumas Independent School District?

A. Yes, sir.

[fol. 284] Q. Were you in 1954 on the Board of Equalization of the Dumas Independent School District?

A. Yes, sir.

Q. Do you recall participating in a hearing on or about August 9, 1954, considering assessments made on realty commonly known as the Cactus Ordnance Works; do you recall participation in that hearing?

A. Yes, sir.

Q. Did the Board of Equalization consider and equalize valuations on property described in these assessments, shown as Exhibit Number Three?

A. I am not acquainted with those section numbers.

Q. Well, it has been testified to by Mr. Powell that he prepared these assessments, so disregard any question of comparison as to the land description and things of that sort. I want to know if this is the property you considered in the Board of Equalization hearing and the property you equalized?

A. I would say it was.

Q. And, do you recall any changes being made on such assessments at the Board of Equalization meeting?

A. Yes, I believe there were.

Q. Do you recall what the changes were?

A. No, I don't.

Q. I will show you Defendant's Exhibit Number One on [fol. 285] which is indicated a change from "Phillips Petroleum Company" to "Phillips Chemical Company", the insertion of additional language at the bottom of the last

attached sheet of descriptions and the changed valuation. Were such changes made by the Board?

A. The figures was authorized by the Board.

Q. How about the other changes in the language?

A. Well, I don't recall who made that change from Phillips Petroleum Company to Phillips Chemical.

Q. You don't recall who added the language "Except that wholly owned by Phillips Chemical Company"?

A. It was the Board who authorized whoever put it down there.

Q. The Board authorized and directed both of those changes. Is that your testimony?

A. Yes, sir.

Mr. Blume: That is all.

Mr. Langley: No questions.

(Witness excused).

GEORGE MURPHY, a witness called to the witness stand by Counsel for the Plaintiff, being duly sworn, testified on his oath, as follows:

Direct examination.

By Mr. Blume:

Q. Will you state your name, please?

A. George Murphy.

[fol. 286.] Q. Were you, during the year 1954, a member of the Board of Equalization of the Dumas Independent School District?

A. Yes, sir, I was.

Q. Did you participate in a hearing on or about August 9, 1954, in regard to assessments made against the property commonly referred to as Cactus Ordnance Works?

A. Yes, sir.

Q. I will ask you to examine Plaintiff's Exhibit Number Three, consisting of copies of assessments of renditions and I will ask you if at that Board of Equalization meeting you considered and equalized the value on the prop

erty therein described for the years 1949 through 1954, inclusive?

A. I believe the answer to that question is yes. We did consider all of the property brought before the Board for valuation.

Q. And, you reduced valuation on the property described there from the given figure of Ten Million Dollars to some other figure for each of the years in question, did you not?

A. I believe that is correct.

Q. I will hand you Defendant's Exhibit Number One and ask you to note some changes on that exhibit in red pencil and also tell you that somewhat similar changes were made for each of the other years and I will ask you if you know who made those changes?

A. As to who did the actual writing, I do not. We authorized the change.

Q. You directed that it be done?

A. Yes, sir.

Q. By "we", you mean the Board of Equalization?

A. Yes, sir, that is right.

Q. When you directed the addition of language, "Except that wholly owned by Phillips Chemical Company", you wanted to exclude any property owned by Phillips Chemical Company?

Mr. Thomas: We object to that question for the reason that it calls for a conclusion of the witness. The instrument speaks for itself. It is not subject to interpretation by this witness or any other witness.

The Court: Sustain the objection.

Mr. Blume: No more questions.

Mr. Langley: No questions.

(Witness excused).

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Blume: I would like next to introduce an admission against the defendant, a statement contained in a brief submitted by the defendant, as follows: "The defendant of course, disagrees with this view of the case and feels that it has levied a valid tax against the plaintiff on a

property right owned by the plaintiff in and to property owned by the United States and leased to the plaintiff and that the tax is against the leasehold interest of the [fol. 288] plaintiff, even though the assessment is levied upon a value which is measured by the value of the fee interest in the property." That statement is contained in a brief signed by Earnest L. Langley.

Mr. Langley: May it please the Court, we object to the introduction of that in evidence for the reason that it is not an admission in the first place because it does not say that the tax is levied upon that interest or upon that value. Rather, it says that the tax is against the leasehold interest of the plaintiff even though it is levied upon a value which is measured by the fee interest of the property and could be interpreted to mean that no matter what value is placed upon it and even though it is about value as to the fee interest it is, nevertheless, levied against the leasehold interest of the plaintiff and that is all that is admitted. Also, we might say that we assume that opposing counsel will admit and stipulate, by offering this in evidence, that we have indeed levied only on the leasehold interest of the plaintiff.

Mr. Blume: We are not so stipulating.

Mr. Langley: We are not objecting to that portion of it that you have offered stating that it is levied against the leasehold interest only and you have offered that in evidence.

[fol. 289] Mr. Blume: We offer the whole thing and we particularly offer that portion.

The Court: What is it worth?

Mr. Blume: I think it is an admission that the tax was levied on the entire fee interest and that was their theory and that is what they did.

The Court: That isn't what it says.

Mr. Blume: It says that the assessment is levied upon a value which is measured by a fee interest in the property.

Mr. Langley: We object for the further reason that it is immaterial and irrelevant to this inquiry when the issue before the Court has nothing to do with valuation levied against the leasehold interest of the plaintiff in the

property and the question is not before the Court as to what value was placed on it or how they attempted to arrive at a value. The only question is whether or not it was taxable and, if it was levied against the leasehold interest, then that question is reserved for a later trial.

The Court: Sustain the objection.

Mr. Blume: I would like to next offer in evidence portions of a superseded pleading of the defendant, that is portions of the Original Cross Action of the Defendant Dumas Independent School District, and would like to [fol. 290] introduce Paragraphs 11, 12, 13, 14, 15, 16 and 17, which are introduced for the purpose of showing that the defendant taxed and valued the fee interest as so stated therein.

Mr. Langley: Your Honor, we object to the offering of that in evidence for several reasons: First, because it is irrelevant and immaterial; second, because it constitutes a taking out of context a part only of a pleading which should not be considered without considering also Paragraph 7 of that same pleading and cross-action, wherein it is stated that the Cross-plaintiff would show the Court that the property hereinafter set out and described is property owned in fee simple by the United States of America and the same is leased by the United States of America to Cross-Plaintiff, Phillips Chemical Company, and so forth; and, Paragraph 8 which recites that the property is taxable under one or the other or more of the following statutes, and so forth, all of which, taken together, indicates that there were not attempts made to assess the fee interest in this property to someone who was not the owner of it, which is the apparent and patent purpose of this pleading in evidence.

Mr. Blume: You can introduce that part if you think it is relevant.

[fol. 291] The Court: Isn't it true that the pleading filed in the case is as much a part of the record as any other?

Mr. Blume: It is my understanding that superseded pleadings are not a part of the record unless introduced.

The Court: I will sustain the objection.

Mr. Blume: Note our exception.

[fol. 311]

STIPULATIONS RE
PHILLIPS CHEMICAL COMPANY

Mr. Blume: I will ask the Attorneys for the defendant if they won't stipulate that Phillips Chemical Company has been since July 30, 1948, and still is, a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, and having a permit [fol. 312] to do business in the State of Texas.

Mr. Langley: We will so stipulate.

Mr. Blume: Also That Phillips Chemical Company from August 16, 1948 to the present time has operated within the Dumas Independent School District a plant for the production of ammonia and/or nitric acid, which is commonly referred to as the Cactus Plant or the Cactus Ordnance Works?

Mr. Langley: We will stipulate that.

Mr. Blume: Will you further stipulate that the Phillips Chemical Company is a wholly owned subsidiary of Phillips Petroleum Company?

Mr. Langley: We will so stipulate.

Mr. Blume: I would like to introduce Request Number Three which reads: "That the defendants ~~have assessed~~ or attempted to assess for the years 1949 to 1954, inclusive, against Phillips Chemical Company the property described in Paragraph 7 of Plaintiff's Original Petition filed in this cause", and the answer thereto, "Admitted." I introduce Request Number Seven which reads: "That the United States of America owns the property upon which the defendants seek to collect taxes from the plaintiff as described in Paragraph 7 of Plaintiff's Original Petition, and that the United States of America has owned such property [fol. 313] during all of the years 1949 to 1954, inclusive." The answer is: "It is the understanding of the defendants that the United States of America does own the property referred to in Request Number Seven, although it should be noted that some of such land is owned in fee while other tracts of such land are owned by easement only and, further, the defendants say that there is some question as to the exact extent of the ownership of the United States of America in both the land so referred to and in certain improvements and buildings and equipment erected on

said land, it being the understanding of the defendants that the plaintiff is the owner of some of such improvements, buildings and equipment and, further, the matter of ownership of a multi-million dollar plant being a matter of such complexity and the defendants not being in possession of full information concerning such ownership the said defendants state that they are unable to admit or deny Request Number Seven."

Mr. Langley: If the Court please, I think that answer in itself shows that it is inadmissible by virtue of the fact that the defendant was unable to admit or deny Number Seven. We move that it be stricken.

Mr. Blume: I think the answer goes only to your knowledge of ownership that you have admitted and not to the question of what was taxed and that it is an admission [fol. 314] that you taxed the property described in Paragraph Seven.

The Court: Well, it would seem to me that whatever the answer is that it is admissible; what it may be worth is something else.

Mr. Thomas: I thought it was already stipulated that the United States Government owned the property subject to the leasehold interest of Phillips Chemical and it seems to me that we are just burdening the record by repetition.

The Court: Overrule the objection.

Mr. Langley: Exception.

Mr. Blume: I would like next to introduce Paragraph Number Seven of the Plaintiff's Original Petition for the purposes of identification of the subject matter of those admissions.

Mr. Langley: We will stipulate with you for the purpose of avoiding the introduction of five or six pages in the record that the property described in the Requests for Admissions is the same property described in the pleadings of the parties and in the assessment lists and so forth that are before the court.

Mr. Blume: I will withdraw my offer then of Paragraph Number Seven of the Plaintiff's Petition.

Mr. Langley: However, Mr. Blume, I might also say [fol. 315] at this time that that stipulation and admission

is with regard to the legal description set out in those various places and is not a stipulation with regard to ownership interest or leasehold interest or otherwise. It is just a matter of the fact that in your said Paragraph Number Seven you have a legal description of certain properties. Those same properties referred to in that Request for Admissions are the same property descriptions set out in your pleadings and in our pleadings and in the assessment sheets. I believe, for example, it does not state in your pleading that it is the property except that wholly owned by Phillips Chemical Company. That is not stated in your pleadings nor in the Requests for Admissions but it is stated in the assignment sheets. There are about five pages of legal description which we need not burden the record with another time.

Mr. Blume: I think we might refer to it by means of the current pleading, which is our amended petition, and stipulate that it is the same property described in Paragraph 6 thereof.

Mr. Langley: All right.

Mr. Blume: We are ready to close, your Honor.

Mr. Langley: Let the record show that the defendant called this witness as an adverse witness, as an agent and [fol. 316] employee of the plaintiff for the purpose of cross examination.

CLAY CARRITHERS, a witness called to the witness stand by Counsel for the defendant, being duly sworn, testified on his oath, as follows:

Direct examination.

By Mr. Langley:

Q. Please state your name?

A. Clay Carrithers.

Q. And, where do you live?

A. Amarillo, Texas.

Q. You are an employee of Phillips Chemical Company, are you not?

A. I am.

Q. And, likewise, of Phillips Petroleum Company?

A. I am.

Q. And, what is your official position with those companies, sir?

A. My official title is Division Manager of the Tax, Insurance and Claims Department.

Q. Your offices are in the other offices of Phillips Petroleum Company in the First National Bank Building in Amarillo?

A. That is right.

Q. How long have you been in that position, Mr. Carrithers?

A. Since September of 1950.

[fol. 317] Q. And, you were so acting then during the year 1954 and all of such year?

A. Yes, sir.

Q. Now, I ask you whether or not prior to, say, the summer of 1954, either Mr. Thomas or Mr. Witherspoon or myself some members of our law firm down at Hereford corresponded with you by an exchange of several letters with regard to the possible taxability of the Cactus Ordnance Works to Phillips Petroleum or Chemical Company?

A. As I recall, I think there was possibly one letter that we received. I am not sure about that. However, I do recall that Mr. Thomas and Mr. Phillips called at our office in Amarillo relative to that matter sometime in 1954; the exact date, I can't remember.

Q. Was Mr. Powell with Mr. Thomas on at least one occasion?

A. No, sir.

Q. You mentioned a man by the name of Phillips?

A. Yes, sir.

Q. Who was that?

A. I understand he was an employee of John R. Powell and a Deputy Collector of the Dumas Independent School district tax office.

Mr. Langley: Will you mark, please, Mr. Reporter, these four instruments.

(Received and marked, "Defendant's Exhibits Numbers [fol. 318] Three, Four, Five and Six").

By Mr. Langley:

Q. Mr. Carrithers, I hand you here Defendant's Exhibits Numbers Three, Four, Five and Six, and ask you if those are not four letters written by you and addressed either to a member of our law firm or to the Dumas Independent School District in each case?

A. They are, sir.

Q. And, in the letter marked Defendant's Exhibit Number Three would you just please read that letter, please?

Mr. Blume: May I see them?

By Mr. Langley:

Q. Would you just read that letter, please, sir - number three?

Mr. Blume: I do have some objections to the relevancy of some of those. I suppose I will have to let you read it and I will see.

A. This letter is dated January 11, 1954, addressed to James W. Witherspoon, Attorney at law, Hereford, Texas, and reads as follows: "Dear Sir: Prior to receiving your letter of December 31, 1953, you were advised that we would be glad to discuss with you your prior request concerning a proposed assessment at the Cactus Plant. We had hoped to determine by such conference what it is you wanted. Are we to assume that you are seeking the detail of the properties owned by the United States Army? If so, we will pass your request along to the Secretary of the Army to [fol. 319] determine whether he is disposed to comply or will permit us to comply. If it is the properties of the Phillips Company you are concerned with, you are advised that the Public Records will disclose that they were rendered, assessed and taxed, taxes paid thereon, for all years to and including the year of 1953. For the year 1954, we will render this property at the proper time and disclose any information sought by any duly organized official of any subdivision of the State of Texas authorized by law to assess taxes." Signed Very truly yours, and signed by me.

Q. In writing that letter, is it not true that you were doing that in response to letters from our office requesting you to render for taxation purposes the interest of the Phillips Companies in the Cactus Plant?

A. Well, I think that bears up, to my thinking perfectly clear, in that, I was trying to seek at the moment just what it was you wanted and, in response to your question, I think that I said in that letter that if it is the property of the Phillips Companies that you want we feel that we have rendered for the past years and that we would do so for 1954. I can't recall definitely whether it was a telephone call or a call from Mr. Thomas or someone else leading up to that but, at that particular juncture, we were clearly or I was clearly trying to find out what you were seeking in order that I would be able to answer your question [fol. 329] intelligently.

Q. Did you find out at a later time what we were seeking?

A. Yes, sir.

Q. And, what was that?

A. That you and your attorneys wanted us to make a rendition for all of the property commonly known as the Cactus Plant, irrespective of whether it was under lease to Phillips Petroleum Company or operated by Phillips for the Government.

Q. And, did we not tell you at one time or another, and perhaps more than one time, that it was our contention that your interest in the property as Lessee was taxable?

A. That is right, sir.

Q. And, you know and understood with us, as attorneys for the School District, at all relevant times here, from and after this letter at least, that we were not making any contention that you had not paid your taxes on your wholly owned property but that we were contending that taxes were due by you on properties, the title of which was in the United States; you knew that, did you not?

A. State that question again, please, sir.

Q. From and shortly after this letter was written, it came to be understood between yourself and our law firm, as representative of the school district, that we were not attempting to levy or assess any more taxes on your wholly

owned property but rather on some interest owned by you [fol. 321] in property the fee title of which was in the United States?

Mr. Blume: I don't believe that is a proper question, Your Honor. It calls for him to state what the understanding was of both parties. I object to the question.

Mr. Langley: Let the question be withdrawn.

By Mr. Langley:

Q. Did we, as attorneys for the School District, or did the School District or Tax Assessor or anyone else connected with the School District, ever demand that you render that property for taxation as the fee simple owner of it?

A. State that question again, Please, Mr. Langley.

Mr. Langley: Let me ask the Reporter to read it.

(The Reporter read the last question asked.)

A. No, sir.

Q. You knew and understood and we knew and understood all along that you were a Lessee merely; isn't that correct?

A. Well, I wouldn't say that I knew that all the time; no, sir.

Q. From and after the time of this letter?

A. I would say that I knew that at the time of the Board of Equalization.

Mr. Blume: I must make the same objection to that; calling for him to state what he understood you to understand, something of that nature, was it not?

[fol. 322] Mr. Langley: If the Court, please, I think I am asking him for a conclusion, all right, of his understanding but we can get at it by a little more drawn out method. That is a shorthand rendition but I can ask him what he understands from his conversations and contact with the school district and its attorneys.

The Court: Overrule the objection.

Mr. Langley: It is relevant, Your Honor.

The Court: I have overruled the objection.

By Mr. Langley:

Q. You knew all along here, at least by the time of the Equalization Board Hearing and by the time you were getting assessment sheets and so forth, that we understood and that the School District knew that you were not the fee owner of the property?

A. Yes, sir. I would say that is clear.

Q. And, you knew we were not attempting to assess you as a fee owner but just your interest in the property. What ever that interest was?

A. Yes, sir.

Q. And, you weren't misled by the assessment sheets, were you, Mr. Carrithers?

A. Well, I would say that the assessment sheets were not particularly clear and I think it was okay about the time that the Board of Equalization met that it was crystallized as to what you were driving at.

101-323 Q. To your knowledge, have you as attorneys, or has anyone else connected with the School District, ever denied that the Government was the fee simple owner of the property?

A. Not to my knowledge.

Q. Subject to the leasehold interest of the Phillips Chemical Company or Phillips Petroleum Company?

A. That is my understanding.

Q. And, it was your understanding that we knew about the existence of that lease?

A. Yes, sir.

Q. Now, you appeared before the Board of Equalization, did you, yourself?

A. Well, I was there, yes, sir.

Q. And, is it not true that you informed the Board of Equalization of the School District in 1954, in August or September, that Phillips Petroleum Company did not own the leasehold but that it was owned by Phillips Chemical?

A. I did not, personally; no.

Q. You didn't personally so inform them?

A. No.

Q. I ask you whether or not, by letter, dated July 12, 1954, you informed the Dunals Independent School District

that the Phillips Petroleum Company didn't own the property identified in the assessment?

A. If you are referring to a letter in your hand, may I [fol. 324] see it, please, sir? This is referring to your identified Exhibit Number Five. In answer to your question, I believe the rendition sheets presented to me by Mr. Phillips and Mr. Thomas or sent to me from them assessed the property in the name of Phillips Petroleum Company and that this letter here, Second paragraph, refers directly to that; that the assessment as made is erroneous; that Phillips Chemical Company is the lessee.

Q. And, that correction was made by the Board of Equalization before the taxes were placed on the tax rolls?

A. As far as the record is concerned, I understand it has; yes.

Q. That was the only correction that you asked to be made in the assessment sheets or in the rolls of the description of the property or any way connected with it?

A. That letter, Exhibit Number Five, is explanatory as far as I am concerned personally.

Q. Did you ever personally ask the School District or its attorneys or Board of Equalization, or Tax Assessor to make any other corrections in the property description?

A. I did not personally; no.

Q. Do you know of your own knowledge whether anyone else connected with Phillips Petroleum Company or Phillips Chemical Company ever made any such further request?

A. I would have to study that thought further. I just [fol. 325] don't know at this moment.

Q. You don't know of anybody who ever did?

A. I don't know all of the details that took place at the Board of Equalization.

Q. I am just asking you whether you know of your own knowledge?

A. I don't of my own knowledge; no.

Mr. Landley: That is all.

Cross examination.

By Mr. Boyd:

Q. Mr. Carrithers, was it your understanding that the School District was attempting to value the property at full fee value?

Mr. Thomas: We are going to object to his understanding of what the Board of Equalization did. It is a conclusion of the witness. It is irrelevant and immaterial.

Mr. Boyd: I believe, in that connection, we have had a number of objections put to the questions asked this witness which called for his conclusions as to what his impression of what the Board and the attorneys for the Board and the attorneys for the School District were trying to do and those objections were overruled and we are simply following that line of examination to develop what his understanding of what their position was to get a full explanation [fol. 326] of it and of his understanding of their position.

The Court: Merely because a witness is allowed to testify to some conclusions doesn't make all of them legal.

Mr. Boyd: I understand that but as I understood from the question and answer a moment ago they asked if it was the understanding of this witness that the school district and the attorneys for the school district and the school board were attempting to assess to Phillips only the leasehold estate in that property and he said that that was his understanding of what their position was. Now, I want to follow that by asking him did he also understand their position to be that they were that they felt, under law, that they could assess the Cactus Ordinance Works to Phillips at its full fee value the same as if Phillips owned it.

Mr. Thomas: May it please the Court, in the first place, the most that could be said of that, even if it were admissible, would be to go to the question of whether the value placed by the Board of Equalization was excessive and I thought we were not trying that issue today and, secondly, the prior questions asked Mr. Carrithers as to whether or not he understood and whether or not Phillips Chemical understood the assessments went to this one [fol. 327] particular point if it was not clear to them that

the law imposes an obligation upon the taxpayer to go to the Board and ask that it be clarified. We were attempting to show and did show by this witness, that there was no confusion in the minds of this taxpayer as to what interest was being assessed. We didn't go into the value question and didn't ask for any conclusions from him in that connection.

The Court: I will sustain the objections; but, if you want to put in the record what his answer is, you may do so.

By Mr. Boyd:

Q. I will ask you then this question; as to whether or not it was your understanding that the school district or the attorneys for the school district or the Board of Equalization felt that they could assess the Cactus Ordnance Works to Phillips at its full fee value, the same as if Phillips Chemical Company owned it; was it your understanding that that was their position?

A. Read that question—state that question back to me again.

(The Reporter read the last question asked.)

A. Well, I didn't believe that they were attempting to assess it as a fee property but they were attempting to assess it on the basis of Phillips Chemical Company as a Lessee.

Q. Was it your understanding that they were assessing [fol. 328] the leasehold estate of Phillips Chemical Company; is it your understanding that that is what they described on this rendition sheet?

A. It was my understanding that they were attempting to assess the interest that Phillips had as a lessee.

Q. What value did they put on it—did they put the leasehold value or the fee value?

A. I do not know whether or not there was two values or not; whether in their minds there was a fee value and a leasehold value.

Q. Which value did you feel that they discussed at the Board of Equalization, the fee value or leasehold value?

Mr. Thomas: It is not a question of what Mr. Carrithers felt or what his inclinations were and I object to the question as being improper and irrelevant and immaterial.

The Court: I sustain the objection.

By Mr. Boyd:

Q: I will ask you this then: That when you denied liability did you feel that there was any need to ask for any correction of the assessments or tax rolls, if you considered that there were any errors in the same?

The Court: Did you understand his question?

A: Well, again, I get back to my statement that I wasn't present at the full hearing of the Board of Equalization so I can't speak of my own knowledge of what transpired [fol. 329] there. I think that until after the Board of Equalization hearing, and the knowledge I had, that there were a lot of clarifications as far as the renditions that were delivered to me by either Mr. Thomas or Mr. Phillips as to the property described on there.

Q: What clarification do you have in mind there?

A: Well, I think that I wanted to know what they were assessing or attempting to assess other than a fee.

Q: So, if you had not taken the position of denying liability, then, you would have inquired as to what property they were attempting to assess there other than the fee?

A: I would have.

Mr. Thomas: We object to that question as being leading and ask that it be stricken.

The Court: I sustain the objection.

By Mr. Boyd:

Q: I will ask you this then. Is it a fact that you denied liability?

A: Yes, sir.

Q: And, if you had not denied liability, would you have questioned anything about the statement or tax rolls or assessments?

A: Yes, sir.

Mr. Thomas: We are going to object to that as being irrelevant and immaterial. He said he denied liability and what he would have done if he hadn't have denied liability [fol. 330] has nothing to do with any issue.

The Court: Sustain the objection.

Mr. Thomas: And, ask that the question and answer be stricken.

Mr. Boyd: Was that question and answer stricken?

The Court: Yes, sir.

By Mr. Boyd:

Q. At the beginning of your testimony I think you testified that a fellow by the name of Phillips came with Mr. Thomas to your office and it was your opinion that he was a Deputy Tax Assessor-Collector for the Dumas Independent School District. Did you know as a matter of fact if he was or was not a Deputy Tax Assessor of the Dumas Independent School District?

A. I wasn't real certain at that time; no.

Q. Do you know as a matter of fact whether or not he was a deputy?

A. He was.

Q. On what do you base that knowledge?

A. He represented himself as being a deputy in Mr. Powell's office when he was in the presence of Mr. Thomas and, subsequent to that, I saw him in Mr. Powell's office. I don't know how many days later but through personal observation and contact with Mr. Powell I determined that he was employed by Mr. Powell in that capacity.

Q. Did you determine that he was employed as a clerk or as a deputy?

[fol. 331] A. Well, I frankly don't know the distinction between a deputy and a clerk. I know he was an employee of the tax office and I know he was under the supervision of Mr. Powell.

Q. Do you know if he made any bond or had taken any oath as a deputy?

A. No, sir.

Q. Do you know what the qualifications of a deputy are?

A. No, sir.

Q. As a matter of fact then, you don't know if he was a deputy or not?

A. No, sir.

Mr. Thomas: This is an attempt on the part of plaintiff to impeach his own witness and the witness testified he was a deputy and I don't see what difference it makes for them to keep laboring the point if he is or not.

The Court: I don't see the materiality of it.

Mr. Boyd: That is all.

Mr. Langley: No more questions.

(Witness excused.)

STIPULATIONS RE BOARD OF EQUALIZATION

Mr. Langley: We will ask Counsel for the Plaintiff if they will stipulate at this time that the Board of Equalization of the Dumas Independent School District, which convened about August 9, 1954, was a duly constituted Board [fol. 332] of Equalization; that it convened at the time and in the manner provided by law and that the plaintiff appeared before that Board in the time and manner provided by law; that the Board was legally appointed, constituted and acting at that time.

Mr. Blume: I don't see the relevancy of it to this severed cause.

Mr. Langley: We want that stipulated for the purpose of showing that there will be no question raised as to the validity of the action of the Board in acting on those assessment sheets, approving them and placing them on the tax rolls and the tax rolls having been approved and the valuations approved by the Board and so forth. I was reading practically verbatim from Paragraph 4 of the second cause of action alleged in your First Amended Original Petition. If you do not care to stipulate to that, I can introduce that pleading in evidence.

Mr. Blume: I would be glad to stipulate but I still don't see the relevancy of it since we are not going into values at this time. We have called them and they have all testified that they were members of the Board of Equalization.

Mr. Langley: You have placed in issue by argument and testimony during the course of this proceeding today the

[fol. 333] question of the validity of these assessment sheets and the validity of the assessments and tax rolls.

Mr. Blume: We will stipulate that subject to our not seeing the relevancy of it that Mr. Foreman, Mr. Troutman and Mr. Murphy were duly elected and appointed members of the Board of Equalization and that we did appear before them on or about August 9, 1954. Is that the substance of your request?

Mr. Langley: And, that they were a legally appointed, constituted and acting Board of Equalization at that time?

Mr. Blume: Yes, we will stipulate that.

Mr. Langley: And, in the time and manner provided by law the plaintiff appeared before that Board on or about August 9, 1954?

Mr. Blume: All right. We will stipulate to that.

Mr. Langley: We will rest, your Honor.

Hayward C. Marsh, a witness called to the witness stand by Counsel for Plaintiff, in rebuttal, being duly sworn, testified on his oath, as follows:

Direct examination.

By Mr. Blume:

Q. Will you state your name, please?

[fol. 334] A. Hayward C. Marsh.

Q. Where do you reside?

A. Bartlesville, Oklahoma.

Q. By whom are you employed?

A. Phillips Petroleum Company.

Q. In what capacity?

A. Assistant Manager of the Tax, Insurance and Claims Department.

Q. Does your department handle tax matters also for Phillips Chemical Company?

A. Yes, sir.

Q. Are you a superior of Mr. Clay Carrithers?

A. Administrative superior; yes, sir.

Q. Who primarily handled the matter of the attempted

taxation of the Cactus Ordnance Works, yourself or Mr. Carrithers?

A. It was my responsibility.

Q. Did you appear at the Board of Equalization during the entire proceeding?

A. Yes, sir.

Q. Mr. Carrithers was there only a portion of the time; isn't that correct?

A. That is right.

Q. Was all of the correspondence received by Mr. Carrithers and the import of all of his conversations with the attorneys for the school district transmitted to you as far as you know?

[fol. 335] A. As far as I know.

Q. Did you more or less supervise and direct the presentation of the matter which was presented to the Board of Equalization in regard to Cactus Ordnance Works?

A. I had basic supervision of the responsibility of assembling facts and witnesses; not the actual presentation of the case.

Q. Did you have a clear understanding as to what the Dumas Independent School District was attempting to tax?

A. It was clear to me what the actions taken by the Board were intended to tax.

Q. What did they indicate to you?

A. Indicated to me the full fee title to the property known as Cactus Ordnance Works.

Mr. Langley: If it please the Court, we object to that question and answer, particularly to the answer, unless this witness will take himself out of the realm of shorthand rendition of his understanding by saying upon what he based his understanding that they were attempting to assess the fee simple title and explain why it is that he so believes.

The Court: Sustain the objection.

By Mr. Blume:

Q. Will you then state

Mr. Langley: And, we ask that that answer be stricken. [fol. 336] The Court: All right.

By Mr. Blume:

Q. Will you state how you arrived at an understanding, if you arrived at one, of what the actions of the school district indicated they were attempting to tax?

A. The clear wording of the assessment that was made described real property.

Mr. Thomas: If this is going to be an interpretation of the assessment sheet, then we are going to object to it because that assessment speaks for itself and it is not for this witness to interpret—it is a conclusion.

Mr. Blume: On direct examination, the defendants brought into issue the understanding of these people and that is the issue; not an interpretation but the subject matter as to their understanding.

Mr. Langley: On that issue, Mr. Carrithers was asked essentially one question and that was pitched in several different fashions but he was asked if he understood throughout all of this thing that the School Board knew that Phillips Petroleum Company or Phillips Chemical Company didn't own the fee simple title and he said he knew and understood that. That is as far as his understanding was inquired into and they want to ask Mr. Marsh if he knew and understood that the School Board knew and understood that Phillips Chemical Company and Phillips [fol. 337] Petroleum Company didn't own the fee simple title to this property. That is all right; we would ask Mr. Marsh the same thing; but, not his understanding of the way that the Board was operating and so forth.

The Court: I sustain the objection.

By Mr. Blume:

Q. Was any testimony prepared and presented to the Board concerning the value of the leasehold?

A. No, sir.

Q. Why was it not presented?

A. Because no attempt had been made to assess us as far as we knew.

Mr. Langley: Again, we object to that as being a conclusion of the witness, Your Honor.

The Court: Sustain the objection.

Mr. Langley: And, ask that that question and answer be stricken.

The Court: All right.

By Mr. Blume:

Q. Was all of the testimony presented to the Board of Equalization on behalf of Phillips Chemical Company or Phillips Petroleum Company directed to the fee value of the property?

A. Yes, sir.

Q. Was all of the testimony presented by the Board of Equalization directed toward the fee value of the property?

A. Yes, sir.

[fol. 338] Mr. Langley: Again, Your Honor, we say that that calls for a direct conclusion as to the applicability to a number of legal and factual questions of some two hundred and seventy five pages of testimony from some fifteen or twenty witnesses and that his opinion and conclusion as to what all of that testimony was directed to would be an improper judgment on the part of the witness and improper opinion testimony and we object to it and move that it be stricken.

The Court: I sustain the objection.

Mr. Blume: That is all we have.

Mr. Langley: No questions.

(Witness excused.)

Mr. Blume: We are through, Your Honor.

Mr. Langley: We are through.

DELINQUENT TAX NOTICE

AS REQUIRED BY ARTICLE 7004, ACTS OF LEGISLATURE, AND OFFICIAL STATUTES OF TEXAS
STATEMENT OF TAXES AS DUE BY THE DELINQUENT TAX PAID

INDEPENDENT SCHOOL DISTRICT

County, Texas, on the following property:

MOORE

CORRECTED NOTICE

61

January 22,

Phillips Chemical Company

P. O. Box 1851, Amarillo, Texas

TO WHOM DUE	LAND	CITY	TAXES	TOTAL
Phillips Chemical Co.	Parts of Sections 20, 28, 29, 36, 37, and 38, Block 24T, TARRANT SURVEY, MOORE COUNTY, TEXAS, containing 1538.31 acres, more or less, (commonly known as Garretts Orchard) including buildings, improvements, fixtures, machinery and appurtenances thereto belonging, EXCEPT that wholly owned by Phillips Chemical Company.		1949	197
do			50 17 1950	2
do			60 7 1951	2
do			60 11 1952	2
do			79 10 1953	27 927 21

THE STATE OF TEXAS, COUNTY OF MOORE, I, the undersigned, County Clerk, do hereby certify that the foregoing is a true and correct copy of the delinquent tax notice as filed in my office on January 22, 1954.

WITNESSED my hand and the seal of said County at Amarillo, Texas, this 22nd day of January, 1954.

Roll.....Page.....Line.....

DUE FROM

Phillips Chemical Co.
Box 1751
Amarillo, Texas

DUMAS
INDEPENDENT SCHOOL DISTRICT
DUMAS, MOORE COUNTY, TEXAS

1954
TAX STATEMENT

Nº 5962

Statement of Taxes due for current year on following described property.

ABSTRACT OR LOT NO	CERTIFICATE TRACT OR BLOK	SURVEY DIVISION OR OUT LOT	ORIGINAL GRANTEE CITY OR TOWN	ACRES	VALUE	AMOUNT DUE
	2-5	Part 20,28, 29,36,37,38	(Cactus Ordinance Works) Including buildings, fixtures, machinery, improvements & appurtenances - located on described property	1538.31	5,358,516	
Personal Property Value						
Total					5,358,516	167,517.30
Plus Penalty & Interest						
Total Taxes Due						

No Discounts Allowed -- Penalty Attaches February 1.

Box 248

Jno. R. Powell
Tax Assessor-Collector

By

WIS BENNETT & CO. AS

No. 2708-A

v.

DUMAS INDEPENDENT SCHOOL DISTRICT, Defendant.

AGREEMENT OF PARTIES

The parties to the above entitled and numbered cause, through their attorneys of record, hereby agree that the above and foregoing pages numbered 2 to 424, inclusive, including the documentary evidence, maps, charts, and other papers and exhibits therein copied or reproduced, constitute the Statement of Facts in said cause and include a true and correct statement of all objections to the admission or exclusion of evidence, the rulings of the Court therein, and the circumstances thereof, and the exceptions of the parties, and the same may be filed as the Statement of Facts in this cause.

Witness our hands this, the 18th day of January, 1957.

Thomas M. Blume, Attorney for Plaintiff.

Earnest L. Langley, Attorney for Defendant.

[fol. 343] Reporter's Certificate to foregoing transcript
omitted in printing.

The above and foregoing statement of facts having been examined by me and found correct, and having been certified to by the Official Court Reporter, the same is hereby approved and ordered filed as part of the record in this cause.

Witness my hand, on this the _____ day of _____
A.D. 1957.

, District Judge, Moore

County, Texas.

[fol. 344] Filed in Supreme Court of Texas, Jan. 6, 1958,
Geo. H. Templin, Clerk. By
Deputy.

[fol. 345]

IN THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME
JUDICIAL DISTRICT OF TEXAS

A 6639

No. 6697

PHILLIPS CHEMICAL COMPANY, Appellant,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT OF MOORE COUNTY,
TEXAS, Appellee.

OPINION—September 30, 1957

This appeal is from a trial court order denying appellant, Phillips Chemical Company, a corporation, injunctive relief in its attempt to restrain appellee, Dumas Independent School District of Moore County, Texas, from assessing and collecting property taxes from appellant for certain designated years on its leasehold interest in property known as "Cactus Ordnance Works" owned in fee simple by the United States Government but operated by appellant under a long term lease contract. The original lease contract was executed on July 23, 1948, effective August 16, 1948, between the United States Government and Phillips Petroleum Company, which assigned it to appellant herein on July 30, 1948. Appellant accepted all of its terms and assumed all of its covenants.

The trial court heard the case without a jury and, only in so far as the controlling question presented here is to be determined, denied appellant the relief sought. In its judgment the trial court found that the said property was not being used or occupied by the United States Government but was being used and occupied by appellant under the terms of the said lease contract in conducting and

operating a business as a private enterprise for profits during each of the years beginning with March 17, 1950 through the year 1954, the same being the period of time appellant alleges appellee is seeking the right to collect the [fol. 346] property taxes upon its leasehold interest previously mentioned.

In its alleged action appellant sought to enjoin appellee from assessing and attempting to collect taxes from it upon the property in question for the years 1949 through 1954, and sought further to cancel the taxes already assessed by appellee. Appellee joined issues with appellant and also filed a cross action seeking to collect taxes from appellant upon its interest in the property for the said years. Upon appellant's motion the trial court severed the question of injunctive relief from the remainder of the suit, including appellee's cross action, and tried only the issue of injunctive relief, after which it entered its order enjoining appellee from assessing and collecting taxes on appellant's interest in the property in question for 1949 and up to March 17, 1950, the date the last amendment to Art. 5248, V.A.C.S. became effective, but denying appellant the relief sought in an effort to enjoin the collection of taxes for the remainder of the period of time from March 17, 1950, through 1954. An appeal from the latter part of the trial court's judgment was perfected by appellant and that is the only question before us. Appellee, as a cross appellant, gave notice of appeal from the first part of the trial court's judgment granting appellant injunctive relief for 1949 and up to March 17, 1950, but appellee as a cross appellant did not bring forward its appeal from that part of the trial court's judgment.

The lease contract here involved is lengthy but under the terms thereof appellant herein accepted a binding lease agreement for the use and operation of a multimillion dollar industrial plant known as the "Cactus Ordnance Works" for its use in manufacturing anhydrous ammonia, or fertilizer, and for other commercial and experimental purposes. The said industrial plant consists of buildings, improvements, machinery and appurtenances thereto located [fol. 347] upon certain described lands in Moore County, Texas. The primary term of the said lease is for 15 years

beginning August 16, 1948, with the right and privilege of appellant herein to extend the primary term of the same for two additional periods of five years each, the consideration therefor being an annual rental of \$1,026,666.67 to be paid by appellant herein as lessee to the United States Government as lessor. The lease further provides for a termination of the same by the United States Government if desired and upon giving 30 days notice to lessee in case of a national emergency, but there is no showing that any such emergency ever existed and appellant herein has continuously occupied and used the property covered in the lease since the date it became effective.

Appellant herein concedes that it owns the said leasehold and has been occupying and using the premises and the property thereon as provided for under the terms of the lease "in its private capacity as a business enterprise in an effort to make a profit therefrom." Appellee contends that because of such ownership of the leasehold by appellant as lessee and because of its operations thereof for a profit, it should be required to pay a fair and equitable tax thereon in the same manner as other competitive private corporations or individuals engaged in a similar enterprise for profit, although the latter parties may own their plants in full. Appellant here charges that appellee is attempting to tax it on the fee simple title to real property with improvements thereon which property is not owned by appellant but is owned by the United States Government. Appellant further charges that it (sic) can not be legally taxed for property owned by the United States Government and not owned by appellant, while appellee asserts it is not seeking to tax appellant on property owned by the United States Government but it is seeking only to tax appellant on its [fol. 348] interest in the property in question by reason of its leasehold, its occupancy and operations of the same in a private capacity for profits as a business enterprise.

The lease contract between the Government as lessor and appellant herein as assignee and lessee recognizes the provisions of "Public Law 364 80th Congress," the leasing Act, codified in part at least in 19 U.S.C.A. 1270-1270d, which provides in part (1270d) that:

"The lessee's interest, made or created pursuant to the provisions of Sections 1270-1270b, 1270d of this title, shall be made subject to State or local taxation."

Under the terms of the lease contract between appellant herein and the Government, appellant obligated itself to pay the local taxes assessed against it by the approval of the language found as a part of the covenant in Condition (Section) 29 of the lease contract reading as follows:

"That the Lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed, or imposed upon the Government or upon the Lessee with respect to or upon the Leased Property."

Article 5248 as amended, effective since March 17, 1950, previously herein referred to, authorizes appellee to impose a property tax upon appellant's interest in the property in question as a result of the leasehold since appellant admittedly occupies and uses the said property in conducting a private business or enterprise in an effort to make a profit therefrom. The language of the said Article is as follows:

"The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements [fol. 349] thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise; provided, however, that any personal property located on said lands which is privately owned by any person, firm, association of persons or corporation shall be subject to taxation by this State and its political subdivisions; and provided, further, that any portion of said lands and improvements which is used and occupied by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in the conduct of any private business or enterprise, shall be subject to taxation by this State and its political subdivisions."

We believe the foregoing provisions are clear, unambiguous and need not be explained.

Appellant contends here that the provisions of Art. 5248 violate the Constitution of the United States but no satisfactory authority has been cited in support of such a contention. In our opinion, the provisions of such Article support appellee's position before this Court and are in harmony with every reasonable construction that can be given the provisions of our Constitution, as well as the laws of our country.

Appellant cites and relies upon the case of *United States of America v. County of Allegheny, Penn.*, 322 U.S. 174, 64 S.Ct. 908, which case is distinguishable in many ways from the case at bar. That case arose in another State and involved a contract of bailment between the United States Government and an individual named Mesta "for mutual benefits" in the operations, which is not the situation in the case at bar. In that case the State as the taxing unit made no effort to segregate Mesta's interest and tax it, which is not analogous to the situation in the case at bar. We find no authority in that case which would be in any way controlling in the case at bar.

The case at bar does not involve the levying and assessment of a tax against the United States Government or [fol. 350] property owned by it but only against appellant as a private corporation and its exclusive interest under the terms of a leasehold agreement in occupying and using the property in its private capacity for a profit. Certainly appellant must have a valuable right in the use of lessor's property since it is paying the United States Government as lessor an annual rental of \$1,026,000.67 for the right to use such property. We have found no principles of law or equity, and appellant has cited us none, which can be reasonably construed so as to exempt appellant from paying such property tax as appellee is seeking in the primary suit to have appellant pay. On the contrary it seems that a reasonable interpretation of every element of the law fairly and justly requires appellant to pay its share of the taxes upon its privately owned leasehold under which it operates its private business enterprise in an effort to make a profit therefrom. We do

find the statutory authority previously herein cited, together with the provisions of Arts. 7146, 7173 and 7174, supporting the trial court's judgment denying appellant any relief, which in effect sustains appellee's efforts to hold appellant liable for its legal taxes.

In our opinion the language used in the leasehold contract and the Federal and State laws contemplate the payment of taxes by appellant upon its investment and the operation thereof shown to exist when such taxes are properly levied and assessed. The taxes cannot be legally assessed against appellant herein as lessee upon the value of the land and improvements thereon owned by the United States Government as lessor, but such can be legally assessed against appellant herein upon the value of its leasehold interest and its operations, with such to be determined as provided for by the Statutes.

For the reasons stated, appellant's points are all overruled and the judgment of the trial court is affirmed.

Pitts, C.J.

[fol. 351]

IN THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME
JUDICIAL DISTRICT OF TEXAS

No. 6697

From the District Court of Moore County

Opinion by Mr. Pitts, C.J.

PHILLIPS CHEMICAL COMPANY, Appellant,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT OF MOORE COUNTY,
Texas, Appellee.

JUDGMENT—September 30, 1957

This cause came on to be heard on the transcript of the record, and the same being inspected, and it appearing to the court that there was no error in the judgment, it is

therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellant, Phillips Chemical Company, and its surety, United States Fidelity and Guaranty Company, a corporation, pay all costs in this behalf expended, for which let execution issue and this decision be certified below for observance.

[fol. 353]

A 6639

IN THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME
JUDICIAL DISTRICT OF TEXAS AT AMARILLO, TEXAS

No. 6697

PHILLIPS CHEMICAL COMPANY, Appellant,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT, Appellee.

APPELLANT'S MOTION FOR REHEARING—

Filed October 14, 1957

[Omitted in printing]

[fol. 369]

REPLY OF DUMAS INDEPENDENT SCHOOL DISTRICT TO MOTION
FOR REHEARING OF PHILLIPS CHEMICAL COMPANY—

Filed October 25, 1957

[Omitted in printing]

[fol. 384]

IN THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME
JUDICIAL DISTRICT OF TEXAS

OPINION ON MOTIONS OF BOTH PARTIES FOR REHEARING

The judgment of the trial court having sustained appellant's contentions in part and appellee's contentions in the remainder thereof and this Court having affirmed the trial court's judgment in its entirety, both parties have filed motions here for rehearing, and in each instance the adversary has ably replied thereto.

After a careful examination of appellant's motion and the reply thereto the same is overruled.

In its original opinion this Court said in part and in effect that, although appellee, as a cross appellant, gave notice of appeal from the first part of the trial court's judgment granting appellant injunctive relief from January 1, 1949 up to March 17, 1950, appellee, as a cross appellant, did not bring forward its appeal from that part of the trial court's judgment. It thus appeared then because of language used in its briefs by appellee subsequent to the filing of a separate brief as a cross appellant on March 2, 1957. Appellee thereafter on March 27, 1957, filed its brief as appellee in the case and there on page 4 said in part:

"Appellee here has appealed from that portion of the judgment of the Trial Court denying its right to recover taxes for the period prior to March 17, 1950, but for the purpose of this brief, only the question of taxability after such date will be considered."

It there devoted its entire brief of 55 pages to urging an affirmance to that part of the trial court's judgment denying relief from and after March 17, 1950, the date the amendment to Article 5248 became effective, and it did so without reference to overturning the former part of the trial court's judgment which favored appellant herein. Thereafter on September 17, 1957, after the case had been submitted and oral argument of the parties heard, appellee filed a reply brief consisting of 36 pages urging an

affirmance of the trial court's judgment and concluded with the following language:

[fol. 385] "For the above reasons, and in accordance with the above authorities, Appellee again prays the Court to affirm the Judgment of the Trial Court."

This Court did affirm the judgment of the trial court, feeling that appellee had by reason of the language more recently used abandoned its right of appeal, in any event, from the first part of the trial court's judgment.

However, after a careful re-examination of the record, the briefs filed and more particularly appellee's motion as a cross appellant urging us to pass on its cross assignment and sustain the same, we feel that the matter of passing on such should have a generous and liberal consideration by us, for which reason we likewise feel impelled to pass on the said cross assignment charging that the trial court erred in holding that appellant's leasehold was not subject to taxation from January 1, 1949 up to March 17, 1950.

As previously stated in our original opinion, we believe the language used in the leasehold contract and the Federal and State laws contemplate the payment of taxes by appellant upon its leasehold, but such could not be accomplished until a State law directly authorizing such had been passed. Property cannot be legally taxed merely by implication or by a "probable" construction of a statute. A direct act is required for such a purpose. We have failed to find any such authority taxing the property here involved until Art. 5248 was amended by the Texas Legislature which became effective March 17, 1950. The said amended Article was copied in full in our original opinion, which is here referred to for further consideration. All general laws governing taxation usually conclude with an exception such as: "... except as otherwise specially provided for by law." We think the matters here presented were "otherwise specially provided for by law" and no direct authority for taxing the leasehold in question was given until Art. 5248 was amended effective [fol. 386] March 17, 1950. Before Article 5248 was

amended, it did not authorize a leasehold such as the one here under consideration to be taxed by the State and its subdivisions. It did not prohibit such from being taxed but it did not authorize it. It did exempt such properties from taxation "so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title *and not otherwise*" (emphasis added). The phrase "and not otherwise" held the matter open for the taxation of a leasehold such as the one here under consideration if and when such statute may be amended directly authorizing such to be taxed, and we think such an amendment was passed by the Legislature for such a purpose effective March 17, 1950. Prior to the amendment a leasehold such as is here involved was exempt from taxation "so long as the property leased was "held, owned, used and occupied by the United States." But when the Article was amended by adding the provisions thereto, we think then and only then, notwithstanding ownership of the primary property by the United States, authority was given by the State Legislature to tax the leasehold here under consideration for the use and benefit of the State and its political subdivisions.

For these reasons appellee's cross assignment as a cross appellant is overruled and the judgment of the trial court is affirmed even as it was in our original opinion.

Pitts, C.J.

[fol. 387] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 388]

IN THE COURT OF CIVIL APPEALS, SEVENTH JUDICIAL DISTRICT

8276 6697

From the District Court of Moore County.

Per Curiam with written opinion by Mr. Pitts, C.J.

PHILLIPS CHEMICAL COMPANY,

vs.

DUMAS INDEPENDENT SCHOOL DIST. OF MOORE COUNTY, TEXAS.

ORDERS ON MOTIONS FOR REHEARING — November 4, 1957

This day came on to be heard the appellee's motion for rehearing and the same, having been duly considered by the Court, is hereby in all things overruled.

8277 6697

From the District Court of Moore County.

Per Curiam with written opinion by Mr. Pitts, C.J.

PHILLIPS CHEMICAL COMPANY,

vs.

DUMAS INDEPENDENT SCHOOL DIST. OF MOORE COUNTY, TEXAS.

This day came on to be heard the appellant's motion for rehearing and the same, having been duly considered by the Court, is hereby in all things overruled.

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 389]

IN THE SUPREME COURT OF TEXAS

No. A-6639

PHILLIPS CHEMICAL COMPANY, Petitioner,

v.

DUMAS INDEPENDENT SCHOOL DISTRICT, Respondent.

APPLICATION FOR WRIT OF ERROR FROM CAUSE NO. 6697 IN
THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME
JUDICIAL DISTRICT AT AMARILLO—Filed January 6, 1958

[Omitted in printing]

[fol. 486]

RESPONDENT'S REPLY TO APPLICATION FOR WRIT OF ERROR
FROM CAUSE NO. 6697 IN THE COURT OF CIVIL APPEALS
FOR THE SEVENTH SUPREME JUDICIAL DISTRICT AT AMA-
RILLO—Filed January 21, 1958

[Omitted in printing]

[fol. 603]

IN THE SUPREME COURT OF TEXAS

No. A-6639

From Moore County, Seventh District.

PHILLIPS CHEMICAL COMPANY,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT.

ORDER GRANTING APPLICATIONS FOR WRITS OF ERROR—
February 12, 1958

This day came on to be heard application of Phillips
Chemical Company and application of Dumas Independent
School District for writs of error to the Court of Civil

Appeals for the Seventh District, and, after due consideration, it is ordered that both of said applications be, and hereby are, granted and that writs of error issue as prayed for therein.

[fol. 604]

IN THE SUPREME COURT OF TEXAS

No. A-6639

From Moore County, Seventh District.

PHILLIPS CHEMICAL COMPANY, Petitioner,

v.

DUMAS INDEPENDENT SCHOOL DISTRICT, Respondent.

OPINION — June 18, 1958

Phillips Chemical Company, petitioner herein and plaintiff in the trial court, uses and occupies, as Lessee, a chemical plant owned by the United States Government known as "Cactus Ordnance Works" in Moore County, Texas. Phillips went into possession on August 16, 1948 under and by virtue of a lease contract between the Secretary of the Army, representing the United States of America, as Lessor, and Phillips Petroleum Company, as Lessee. The lease was for a primary term of 15 years with option on the part of Phillips Petroleum Company for renewal of two five year terms, and a further provision that any additional holding over would be on a year to year basis. The Government had certain options for termination of the lease after notice and happening of certain contingencies. This lease was immediately assigned by Phillips Petroleum Company to Phillips Chemical Company and the Chemical Company has operated the plant at all times since possession was taken under the lease.

The Government plant is located within the limits of Dumas Independent School District and that body has

sought to collect school taxes thereon for the years 1949 through 1954, inclusive. Chemical Company, as plaintiff in the trial court, brought this suit in the District Court of Moore County, Texas, to (1) enjoin the School District from attempting to collect ad valorem taxes from it on the "Cactus Ordnance Works"; and (2) to cancel the taxes on the tax rolls of the School District on said property for the years 1949 through 1954. The trial court [fol. 605] severed the question of the right to tax from the question of valuation, and upon trial before the court, without a jury, judgment was rendered cancelling all taxes through March 16, 1950, and permanently enjoining the collection of such taxes for such period upon either the property or the leasehold estate, but validated all taxes after such date and as to these taxes refused the relief sought. Chemical Company appealed and the Court of Civil Appeals affirmed the judgment of the trial court. 307 S.W. 2d 605. Each party applied for a writ of error and both applications were granted. We affirm the judgment of the courts below.

We first consider and discuss the application of the Chemical Company. It has assigned 13 points of error. These points attack the judgments of the courts below; first, on the basis that there exists no lawful authority authorizing taxation to the Chemical Company of either the Government-owned "Cactus Ordnance Works", or the leasehold estate therein; and, second, on the basis of whether the leasehold estate of the Chemical Company was assessed by the School District, as distinguished from the assessment of the property itself, or as a fee interest. After the end of World War II the United States Government had on hand a number of plants which it had constructed for the production of material and supplies needed to effectually wage that war. In order to keep these plants and equipment in working condition and available to the Government in case of another emergency it was decided, after careful study, to sell some of the plants to private operators with a "recapture" clause for the plants to be returned to the Government for a consideration; and to be operated by the purchaser solely under Government direction and control for the

exclusive use of the Government in the event of another war or the declaration of an emergency. Certain other plants and equipment, which included "Cactus Ordnance Works" were to be leased by the Government to private operators with like provisions for Government control and operation in the event of another war or existence of an emergency; also provision was made in the leases authorizing the delivery of possession to the purchaser [fol. 606] in the event the Government exercised its option to sell. Adequate legislation enabling the Government, through its proper officers, to make these sales or leases was passed by Congress. This plant was leased to the Chemical Company under the provisions of "Public Law 364—80th Congress", codified in part as 10 U. S. C. A. 1270, et seq. 1270d provides in part that, "the Lessee's interest, made or created pursuant to the provisions of Sections 1270-1270b, 1270d of this title, shall be made subject to State or local taxation * * *." This Act was passed in 1948. This was a specific consent of Congress that such government property was subject to state or local taxation.

In the lease to this plant, the Chemical Company agreed "that the Lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the Lessee with respect to or upon the Leased Property. * * *." Thus we see the matter of local taxes was taken into consideration by both parties in arriving at the amount of rental to be paid to the Government by the Chemical Company for the use and occupation of "Cactus Ordnance Works."

The School District relied mainly upon Article 5248, Vernon's Annotated Texas Civil Statutes, as amended, effective March 17, 1950, to sustain the validity of their taxes. Chemical Company attacks this statute as being unconstitutional and void on a number of grounds. The principal ground is that such statute attempts to tax property belonging to the United States of America and is therefore unconstitutional. Prior to 1950, Article 5248 read:

"The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; [Federal Use] and such land and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise."

Article 7150, Section 4, Vernon's Annotated Texas Civil Statutes, provides an exemption from taxation of "all property whether real or personal, belonging exclusively to this State * * *, or the United States, * * *."

[fol. 607] The Legislature of the State of Texas being of the opinion that there were "no adequate provisions" for the taxation of the lands and improvements owned by the United States of America, which are used and occupied in the conduct of private businesses and enterprises by persons, firms, associations of persons, and corporations, and that funds badly needed by the State and its political subdivisions were being lost by reason of these properties escaping taxation, (amendment to Article 5248, Sec. 4, Acts 51st Leg., 1st C. S., p. 105, ch. 37, effective March 17, 1950) created an emergency and it amended Article 5248. There was added a proviso for the taxation of personal property belonging to the user and operator of these plants located on the lands owned by the Government and a further proviso " * * * that any portion of said lands and improvements which is *used and occupied* by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in the conduct of any private business or enterprise, shall be subject to taxation by this State and its political subdivisions." The caption of the amended act specifically covers this part of the amendment. Section 2 of the Article is the severability clause and Section 3 repeals all laws and parts of law in conflict with the Act to the extent of the conflict.

In its application for writ of error, the Chemical Company admits that this language is clear and plain and could refer to nothing other than the property itself.

Further it says, "this Honorable Court would certainly be justified if not compelled to find, from the words of the second proviso, [the one immediately quoted above, that it is the entire property interest which the statute says shall be subject to taxation." This is followed by the contention that such construction of the statute would violate both the Constitution of the United States and of Texas. We agree that it was the intention of the Legislature [fol. 608] in amending Article 5218 to make the value of the entire property belonging to the United States Government, if *used and occupied by private business and operated for profit*, taxable to such user and operator. Article 8, Section 1 of our State Constitution provides for taxation of all property within the State in proportion to its value. Article 7145, Vernon's Annotated Texas Civil Statutes, is to the same effect. Article 7146, Vernon's Annotated Texas Civil Statutes, provides in part that "real property for the purposes of taxation, shall be construed to include the land itself, * * * all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all of the rights and privileges belonging or in anywise appertaining thereto * * *"

"The rule is generally accepted in this State that all property rights acquired and held, and all contracts made, are subject to the authority of the State to levy its taxes and collect its revenues for the support of the government. *State for Use of Delta County Levee Imp. Dist. No. 1 v. Bank of Mineral Wells, Texas*, Civ. App., 251 S. W. 1107, writ refused; *Preston v. Anderson County Levee Imp. Dist. No. 2*, Tex. Civ. App., 261 S. W. 1077, writ refused; 9 Tex. Jur., pp. 549, 550, Sec. 114." *State v. Wynne*, 134 Tex. 455, 133 S.W. 2d 951, 956.

Article 8, Section 17, Constitution of the State of Texas, Vernon's Annotated, provides,

"The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this Constitution."

Article 7150, Section 4, Vernon's Annotated Texas Civil Statutes, exempts from taxation property belonging *exclusively* to this State or the United States. With the Chemical Company operating and using "Cactus Ordnance Works", it ceases to belong exclusively to the United States. Whatever exemptions, if any, enjoyed by the United States Government-owned property in the hands of private business operators prior to March 17, 1950 were put to an end by virtue of the Acts of Congress, 1948 permitting state and local taxation, and the amendment of Article 5348 making this property subject to tax [fol. 609] ation. The tax sought to be collected does not violate our State Constitution.

The Chemical Company's objections to Article 5248 as being unconstitutional have been effectively disposed of by the Supreme Court of the United States in its opinions in the cases discussed below. The case of U. S. of America and Borg-Warner Corporation (Detroit Gear Division) v. City of Detroit, — U. S. —, 78 S. Ct. 474, 2 L. Ed. 2d 424, is directly in point. In 1953 the Legislature of the State of Michigan passed Public Act 189 providing that when tax-exempt property is used by a private party in a business conducted for profit, the private party is subject to taxation to the same extent as though he owned the property. The pertinent parts of that Act are "when any real property which for any reason is exempt from taxation is leased, loaned, or otherwise made available to and used by a private individual, . . . in connection with a business conducted for profit, [it] . . . shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property . . ." The United States was owner of an industrial plant in Detroit, Michigan. It leased a portion of that plant to Borg-Warner Corporation at a stipulated annual rental for use in the latter's private manufacturing business. The lease provided that Borg-Warner could deduct from the agreed rental any taxes paid by it under Public Act 189 or similar state statutes enacted during the term of the lease, but the Government reserved the right to contest the validity of such taxes. On January 1, 1954, a tax was assessed against

Borg-Warner under Public Act 189. The tax was based on the value of the property leased and computed at the rate used for calculating real property taxes. Under protest Borg-Warner paid part of the assessment. Sub [fol. 610] sequently the United States and Borg-Warner filed this suit in a state court for refund of the amount paid. They charged that the tax was repugnant to the Constitution of the United States because it imposed a levy upon government property and discriminated against those using such property. The lower court, however, upheld the tax and the Michigan Supreme Court affirmed. 345 Mich. 601, 77 N.W. 2d 79. The Michigan Supreme Court ruled that the tax was neither discriminatory nor was it on property of the United States, but instead was a tax on the lessee's privilege of using the property in a private business conducted for profit. After stating that a state cannot constitutionally levy a tax directly against the Government of the United States or its property without consent of Congress, and that private parties with whom the Government does business cannot escape state taxation, the United States Supreme Court says:

"The Michigan statute challenged here imposes a tax on private lessees and users of tax-exempt property who use such property in a business conducted for profit. Any taxes due under the statute are the personal obligation of the private lessee or user. The owner is not liable for their payment nor is the property itself subject to any lien if they remain unpaid. So far as the United States is concerned as the owner of the exempt property used in this case it seems clear that there was no attempt to levy against its property or treasury."

The Court upholds the validity of the assessed taxes saying:

"A tax for the beneficial use of property, as distinguished from a tax on the property itself, has long been a commonplace in this country. See *Henneford v. Silas Mason Co.*, 300 U. S. 577, 582-583. In measuring such a use tax it seems neither irregular nor extravagant to resort to the value of the property

used; indeed no more so than measuring a sales tax by the value of the property sold. Public Act 189 was apparently designed to equalize the annual tax burden carried by private businesses using exempt property with that of similar businesses using non-exempt property. Other things being the same, it seems obvious enough that use of exempt property is worth as much as use of comparable taxed property during the same interval. In our judgment it was not an impermissible subterfuge but a permissible exercise of its taxing power for Michigan to compute its tax by the value of the property used."

The Court finally concludes:

"Today the United States does business with a vast number of private parties. In this Court the trend has been to reject immunizing these private parties from nondiscriminatory state taxes as a matter of constitutional law. Cf. *Penn-Dairies v. Milk Control System*, 318 U.S. 257, 270. Of course this is not to say that Congress, acting within the proper scope of its power, cannot confer immunity by statute where it does not exist constitutionally. Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such complex problems are ones which Congress is best qualified to resolve. As the Government points out Congress has already extensively legislated in this area by permitting States to tax what would have otherwise been immune. To hold that the tax imposed here on a private business violates the Government's constitutional tax immunity would improperly impair the taxing power of the State. Affirmed."

To the same effect are the companion cases decided the same day, (Mar. 3, 1958), *City of Detroit, a Michigan Municipal Corporation, et al. v. The Murray Corporation of America, a Delaware Corporation, and the United States of America and City of Detroit, a Michigan Municipal*

Corporation v. The Murray Corporation of America, a Delaware Corporation, and the United States of America — U.S. —, 78 S. Ct. 458, 2 L. Ed. 2d 441; United States of America v. Township of Muskegon, a Municipal Corporation and Continental Motors Corporation v. Township of Muskegon, a Municipal Corporation, — U.S. —, 78 S. Ct. 483, 2 L. Ed. 2d 436. These cases clearly uphold the validity of the taxes assessed by the School District against the Chemical Company since March 17, 1950 insofar as the Federal Constitution and laws are concerned.

The Supreme Court of Michigan in its opinion—which was affirmed by the U. S. Supreme Court above—takes up and disposes of the objections made by the Government and Borg Warner to the taxes assessed against them. Much of what is said by that Court is applicable to our case. Particularly applicable is the following quotation (United States and Borg-Warner Corporation v. City of Detroit, 345 Mich. 601, 77 N. W. 2d 79 (1956)):

"As defendant in the instant case properly points out, lessees of private nontax-exempt real estate ordinarily bear the tax burden thereon, either by direct payment thereof under lease requirements or by payment of rent sufficient to include the tax; and defendant reasons that the legislative intent here was to put such lessees of private property used by them in business conducted for profit on an equal footing with users of tax-exempt Government property used [fol. 612] by them in business conducted for profit, thus avoiding discrimination against the former and eliminating an element of unfair competition between them by requiring an equal tax burden as to both; and defendant urges that this does not evidence an intent on the part of the legislature to aim at or reach United States property for taxation but only to treat both classes of users equally."

On the question of unjust discrimination the case of Township of Muskegon v. Continental Motors Corporation, 346 Mich. 218, 77 N. W. 2d 799 (1956), affirmed 78 S.Ct. 483, 2 L.Ed. 2d 436, is applicable:

"The contention [of discrimination] is without merit. Indeed, when it is searchingly examined in light of the companion records that are before us, we should in my view conclude that the legislature by Act 189 has wisely effectuated its continuing duty of providing equal burdens and equal privileges for those of corresponding or similar situation. Without Act 189 a lessee or user for profit of Federally-owned tax immune realty becomes specially privileged and notably favored over his local classmates, and I refer to that class which directly shares the burdens as well as the benefits of local Government."

Other cases upholding a similar tax are *Trimble v. City of Seattle*, 231 U.S. 681, 58 L. Ed. 435, 34 S. Ct. 218, (1914); *Board of Supervisors of Leflore County v. Whittington*, 118 Miss. 799, 80 So. 8 (1918); *Gay v. Jemison*, 52 So. 2d 437 (Fla. 1951); *Meade Heights, Inc. v. State Tax Commission*, 95 A. 2d 280 (Md. 1953); *Sheridanville, Inc. v. Borough of Wrightstown*, 125 F. Supp. 743 (D. N. J. 1954), aff. *Fort Dix Apartments Corporation v. Borough of Wrightstown*, 225 F. 2d 473 (3rd Cir. 1955), cert. denied, 351 U.S. 962, 76 S. Ct. 1024 (1956); *Conley Housing Corporation v. Coleman*, 211 Ga. 835, 89 S.E. 2d 482 (1955); *Offutt Housing Company v. County of Sarpy*, 160 Neb. 320, 70 N. W. 2d 382, aff. 351 U. S. 253, 76 S. Ct. 814 (1956); *State of Missouri v. Personnel Housing, Inc.*, 300 S. W. 2d 506, (Mo. 1957); *Bragg Investment Company, Inc. v. Cumberland County*, 245 N. C. 492, 96 S. E. 2d 341, (1957).

Chemical Company contends that if Article 5248 is given the construction we have given it, it would be unconstitutional as being discriminatory between lessees of United States government property and lessees of State-owned and other exempt properties. United States government property may not be taxed by a state except by consent of the Government. *McCullough v. State of Maryland*, 410 U. S. 613, 4 Wheat. 316, 4 L. Ed. 579; *Van Brocklin v. Anderson*, 117 U. S. 151, 6 S. Ct. 670, 29 L. Ed. 845. The State of Texas recognizes this exemption of United States government property. Article 5248, Vernon's Annotated

Texas Civil Statutes to first proviso added by the amendment of 1950; Section 4 of Article 7150, Vernon's Annotated Texas Civil Statutes. The various provisions of Article 7150 setting forth what property is exempt contain language to the effect that such exemption from taxation shall apply only if the exempt property is " . . . not leased or otherwise used with a view to profit other than for the purpose of maintaining the building, . . . " (Sees. 1, 2, 2a, 3, 7, 16). Thus we see that all property owned by private individuals is subject to taxation when not used for a purpose covered by the exemption statutes, and is taxable for the full value of the property.

Chemical Company relies upon the cases of *Daugherty v. Thompson*, 71 Tex. 192, 9 S. W. 99 (1888); *Taylor v. Robinson*, 72 Tex. 364, 10 S.W. 245 (1888); *State v. Taylor*, 72 Tex. 297, 12 S.W. 176 (1888); *Bashara v. Saratoga Independent School Dist.*, 139 Tex. 532, 163 S. W. 2d 631, 633, (1942); and Article 7173 and 7174, Vernon's Annotated Civil Statutes, to support their contentions that the taxes are illegal and void. The cases of *Daugherty v. Thompson*, *supra*; *Taylor v. Robinson*, *supra*; *State v. Taylor*, *supra*, all have to do with an attempt to tax public school lands, or some interest therein. The Court held that under the Constitution of Texas as it existed at that time these school lands or any interest therein, were not subject to taxation. The case of *Daugherty v. Thompson* discusses the applicability of Articles 4691, 4692 (1888-1889) and now Articles 7173 and 7174 in connection with the right of the Legislature to exempt property from taxation under Article 4673 and now Article 7150. The Court said:

" . . . That section of the constitution [Art. 8, Sec. 2] seems to apply to property owned by persons or corporations in private right, but which, from the use to which it is applied, is, in a qualified sense, deemed public property. Leases of such property for a purpose not carrying the exemption from taxation would doubtless be embraced in article 4691 [now Art. 7173 Rev. St., and therefore subject to taxation against the holder of the leasehold, if it be for a term of three

or more years. Such property, if leased *for a term of less than three years* for a purpose not carrying the exemption, *would be subject to taxation; but, in [fol. 614] the absence of a statute so directing, such a leasehold would not be taxable against the lessee.* * * * (Emphasis added):

In our case the Legislature in amending Article 5248 has "so directed" the taxation of the property against the user and occupier thereof. Again the Court says: " * * * property exempted from taxation in the hands of its owner while used for the purposes on account of which the exemption is given, will doubtless become subject to taxation *if leased*, for any period, to be used for a purpose which does not itself give the exemption, unless in cases in which the exemption is given by the Constitution, or under a contract that would be impaired by taxation, * * * "

While it is true the Legislature has included what are now Articles 7173 and 7174, Vernon's Annotated Texas Civil Statutes, in each revision made since the Daugherty v. Thompson case, it is also true that in 1927 the people of this State adopted an amendment to Article 7 of our State Constitution, known as Article 6a, which makes the State school lands subject to taxation. The Legislature passed Article 7150a in 1927 and Article 7150c in 1931 so as to take away the exemption theretofore enjoyed by the public school lands. Since the above Articles were passed, public school lands have been subject to taxation by the political subdivisions of the State. The above cases are no longer controlling. Neither are Articles 7173 and 7174.

The interest of a lessee in an oil or gas lease is taxable upon the value of such interest. Hager v. Stakes, 116 Tex. 453, 294 S.W. 835, (1927); Tennant v. Dunn, 130 Tex. 285, 110 S.W. 2d 53; (1937); Big Lake Oil Co. v. Reagan County, Tex. Civ. App., 1948, 217 S.W. 2d 171, 174 (10, 11), wr. ref. The taxes levied against Chemical Company are levied under Article 5248 which covers any interest that Chemical Company has in the property composing "Cactus Ordnance Works"—whether by lease

hold or in any other manner. It is not a tax levied only on a leasehold. It is a tax levied against the *user and* [fol. 615] *occupier* of such property and is based on the value of the property *used and occupied* by it.

"The burden of levying taxes rests on the legislature, and that body has plenary power of prescribing the mode of taxation to raise revenue; and the specification of certain objects and subjects of taxation in the Constitution does not prevent it from passing laws requiring other subjects and objects to be taxed, unless expressly prohibited by the Constitution. Section 17 of Article 8, Constitution, Vernon's Ann. St." *State v. Wynne*, 134 Tex. 455, 133 S.W. 2d 951, 958.

And further from *Green v. Frazier*, 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878:

"* * * The tax power of the State is primarily vested in their legislatures, deriving their authority from the people. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action."

See also *Southwestern Oil Co. v. State of Texas*, 217 U.S. 114, 120-124, 54 L. Ed. 688, 30 S. Ct. 496. We hold that Article 5248 is not in violation of the 14th Amendment to the Federal Constitution; that it is not discriminatory and that it is valid legislation and authorized the taxation of Chemical Company's property by the school district.

In the case of *Bashara v. Saratoga Independent School Dist.*, 139 Tex. 532, 163 S.W. 2d 631, the School District sought to collect taxes from Bashara on all of the interest and estate in a 136-acre tract of land. Bashara did

not own all the mineral estate thereunder and was not in control of, using, or occupying, or enjoying any part of a 2/3rds of 1/8th royalty interest in all oil, gas, or other minerals, which had been expressly reserved by a Mrs. [fol. 616] Baker, Bashara's grantor, in the deed whereby Bashara received title to his interest in the 136 acres. This Court held the reserved interest was not taxable to Bashara; that it was an estate in land which Bashara did not own, and, therefore, there was no personal liability on Bashara for the taxes. In the case at bar the tax sought to be enjoined was levied by virtue of specific legislative authority that the user and occupier of United States Government property should pay taxes assessed on the basis of the value of the property it was using, occupying and enjoying.

We overrule the School District's contention in its application that taxes for 1949 through March 16, 1950 are a valid charge against the Chemical Company. The assent given by Congress to taxation of this plant was not effective in this State until the amendment of Article 5248 March 17, 1950, and it is only from and after this date that this property may be lawfully taxed.

Judgments of both Courts below are affirmed.

Meade F. Griffin, Associate Justice.

MFG:hs

Associate Justices Garwood, Calvert and Walker dissenting.

Jun 18 1958

[fol. 617]

DISSENTING OPINION—June 18, 1958

One naturally sympathizes with the desire to tax a federally owned plant, when used by a private lessee for purposes of profit, and especially when the federal government has consented to a tax being levied against "the lessee's interest" and has stipulated in the lease that the lessee shall pay whatever taxes are assessed. On the other hand, the responsibility of providing for taxes being legislative rather than judicial, courts should not strain as much as we have here done to plug rather obvious tax loopholes, which the Legislature can easily plug at any time and could as easily have plugged long ago.

Art. 5248, before the 1950 amendment, was undoubtedly not a taxing statute at all, but an exemption statute, found, as it was and still is, in Title 85, "Lands—Acquisition for Public Use", whereas our taxing statutes, with all of their hundreds of separate provisions, were and are found in Title 122 under the heading "Taxation". The addition of the 1950 proviso, to the effect that federally owned property when used and occupied by private parties "shall be subject to taxation by this State and its political subdivisions", did not convert what was theretofore a pure exemption statute into a taxing statute. It did not levy or provide for any tax, but simply qualified the express exemption theretofore existing, and the Attorney General of Texas has so ruled in his opinion S-124 as late as March 10, 1954.

It may be true that the amendment accomplished no great purpose, if it did not itself establish a tax. On the other hand, the article as it stood prior to the amendment likewise accomplished no great purpose, since it merely declared an exemption which undoubtedly already existed. The explanation of the amendment may well be that in 1950, following the 1948 Federal legislation per [fol. 618] mitting taxation of the lessee's interest in Federal lands, the Legislature simply felt it proper to add a corresponding limitation to the exemption of Art. 5248.

pending later enactment of appropriate taxing laws if found to be desirable.

Now, both before and since 1950, Art. 7173 of the taxing statutes provided that "Property held under a lease for a term of three years or more, * * * belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, * * *." This article deals expressly with the situation of exempt property leased to a private person—the same general situation we have here. *Daugherty v. Thompson*, 71 Tex. 192, 9 S. W. 99, states that the article is what governs in situations of leases of exempt property to private persons but also confirms the obvious fact that it imposes no tax, if the lease in question is for a term under three years.

In *Trammell v. Faught*, 74 Tex. 557, 12 S. W. 317, it was held with respect to state lands leased to private parties for a primary or basic term of more than three years, but subject to the right of the lessor-State to terminate within less than three years in the event it should sell the lands in question, that the lease was not "a lease for a term of three years or more" within the meaning of Art. 7173, *supra*. The Attorney General's opinion, S-124, *supra*, states that the taxability of Federal property leased to private parties is governed by Article 7173, notwithstanding the 1950 proviso to Art. 5248. It ruled that in the particular case, the tax upon the lessee provided by Art. 7173 was applicable, since the lease was for a term of 75 years, that is, "for a term of three years or more". In the instant case, the lease, being terminable by the lessor, upon ninety days' notice, in the event the property should be sold, is a lease for less than three years. If the lawmaking body did not like the result of *Trammell v. Faught*, *supra*, it could long ago have changed it without difficulty. Therefore no tax applies so far as Art. 7173 is concerned. What other article imposes a tax?

If we are to say that either the 1950 proviso in Art. 5248, or the general statement in Art. 7146 that all interests in land are taxable, imposes a tax on the short

term lessee as if he were the land owner, we reach the strange result that both long and short term lessees of [fol. 619] exempt property are so taxable, when Art. 7173 says that only long term lessees are so taxable. Certainly the normal course for the Legislature to pursue in 1950, if it intended to tax both short and long term lessees, would have been to amend Art. 7173 so as to strike out the words "for a term of three years or more". That it failed to take this simple and obvious step certainly does not suggest that we should assume the responsibility to take it.

There is also the matter of Art. 7174, providing that *leases* shall be taxed only upon their market value; and Daugherty v. Thompson, supra, says that there can be no tax against a lessee except it be based on the market value of the *lease*.

If the mentioned rule of Daugherty v. Thompson is to stand, then the tax here involved cannot stand. In the first place, that tax is one based on the fee value of the premises and thus cannot be collected, if the only tax incident to leases is one based on the value of the lease itself. Moreover, we cannot say that the 1950 proviso to Art. 5248 levied a tax on *lessees* of *federally* owned property, measured by the fee value thereof, while as to lessees of other exempt property (to whom 5248 could not possibly apply), the tax is only one upon the market value of the lease itself. The result would be to discriminate against lessees of federally owned property, because their tax (based on the fee value) will obviously be much higher than one based on the sale value of a mere lease, which would be applicable to lessees of other exempt property.

If the mentioned rule of Daugherty v. Thompson is to be discarded (after all these years) on the theory that Art. 7173 effectively imposed on long term lessees of exempt property the same kind of tax sought to be levied here, and that Art. 7174 deals with a different subject, we still have the peculiar result of a short term lessee being taxed on the basis of the full value of the premises, when Art. 7173 says that only long term lessees shall be so taxed.

It therefore appears to me that the tax sought to be collected in this case has no basis in law. By so declaring, and thus putting the matter squarely up to the Legislature, which has the authority and duty to correct statutory confusion and deficiencies of this sort, I think that [fol. 620] in the long run we will serve the public better than by ourselves attempting to do in roundabout fashion what we think the Legislature ought to have done. In this connection there can now be little doubt that a use tax on lessees (whether long term or short term) of exempt property measured by the value of the premises would be as valid under our state constitution as it evidently is under the constitution of the United States. Article 7174 can readily be amended so as to make it clearly inapplicable to leases of exempt property.

W. St. John Garwood, Associate Justice.

WSJG/p

Opinion delivered: Jun 18, 1958.

Oct. 22, 1958—Associate Justice Culver joins in this dissenting opinion on motion for rehearing.

[fol. 621]

DISSENTING OPINION—June 18, 1958

This case involves three basic questions, as follows: 1. Is Phillips Chemical Company's leasehold estate in the Cactus Ordnance Works taxable? 2. If it is, on what basis is it to be valued for tax purposes? 3. If it is, on what date did it become taxable?

Actually, the second question was severed by the trial court, was not tried and technically is not before us. But the three questions are so interrelated that a discussion and decision of the first and third questions require an incidental discussion and decision of the second.

My discussion will indicate not only my points of difference with the majority opinion but as well my points

of difference with the dissenting opinion filed by Associate Justice Garwood."

At the time Congress enacted Public Law 364 in 1948, under which Phillips holds its lease, the right of the State of Texas and its political subdivisions to tax exempt property which had been leased for a non-exempt use, as well as the basis for valuing such property, was then fixed and established by the Constitution and certain statutes and court decisions.

Section 1 of Article 8 of our State Constitution then provided and still provides: "Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law."

[fol. 622] Article 7146, V.A.T.S., then provided and still provides: "Real property for the purpose of taxation, shall be construed to include the land itself, * * * and all the rights and privileges belonging or in anywise appertaining thereto * * *."

Article 7173, V.A.T.S., then provided and still provides: "Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. * * *"

Article 7174, V.A.T.S., then provided, in part, and still provides: "Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash."

Article 5248, V.A.T.S., then provided: "The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise."

In 1888, this Court, in *Daugherty v. Thompson*, 71 Tex. 192, 9 S.W. 99, with Articles 7146, 7173 and 7174 before it, made the following significant holdings:

1. Neither the fee nor a leasehold interest in County public school land is taxable.

2. Exempt property, when leased for a non-exempt purpose for any term, will "doubtless become subject to taxation," but "it does not follow that a lessee will be liable to pay taxes on the leasehold, unless the law so provides."

3. Privately owned exempt property, leased for a non-exempt purpose, will be subject to taxation at its full value to the owner.

4. The Legislature has the power to impose a tax on [fol. 623] the value of a leasehold, on the lessee.

5. "In cases to which Article 4691 (7173) is applicable, it must be held that it was the intention of the legislature only to impose on the lessee a tax based on the value of the 'taxable leasehold estate,' and not impose upon him a tax based on a sum equal to the full value of the real estate."

6. Article 7173 is the *only* statute authorizing taxation of leasehold estates.

In 1889, this Court held in *Trammell v. Faught*, 74 Tex. 556, 12 S.W. 317, that a lease of state owned lands for terms of six and ten years, subject to cancellation upon sale, were not leases "for a term of three years or more" within the meaning of Article 7173.

In 1944, the Supreme Court of the United States held in *United States v. Allegheny County, Pennsylvania*, 322 U.S. 174, 64 S. Ct. 908, 88 L. Ed. 1209, that a leasehold estate in federally owned property was not subject to local taxation.

Section 6a of Article 7 of our State Constitution was adopted in 1926 withdrawing county school lands from the class of lands exempt from taxes, and Article 7150a,

V.A.T.S., was enacted in 1927 providing for the payment of taxes on county owned school lands *in the counties*.

Such was the status of the law in this State when Public Law 364 was enacted by Congress in 1948. The following developments thereafter occurred:

Effective March 17, 1950 the Legislature amended Article 5248 to provide "that any portion of said lands and improvements [federally owned] which is used and occupied by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in the conduct of any private business or enterprise, shall be subject to taxation by this State and its political subdivisions."

In the series of cases recently decided by the Supreme Court of the United States, cited in the majority opinion, it is now held that leasehold estates in federally owned [fol. 624] lands are subject to local taxation. Moreover, it is held that they *may* be made taxable to the lessee as though he were the fee owner. There is, therefore, now no Congressional Act or decision of the Supreme Court of the United States which stands as a bar to local taxation of leasehold estates in federally owned lands as here involved *because* they are federally owned, or which, for that reason alone, prohibits their taxation to the lessee as though he were the owner of the fee. But the absence of such a bar or prohibition does not mean that such leasehold estates may be taxed to the lessee as though he is the owner, or even that they may be taxed to him at all. They may *not* be so taxed under enumerated holding Number 2 in *Daugherty v. Thompson* unless their taxation is authorized by state law. And it goes without saying that lessees of federally owned lands may not be singled out as objects of discriminatory taxation. Discriminatory taxation is prohibited by Article 1, sec. 3 and Article 8, sec. 1 of the Constitution of Texas and by the Fourteenth Amendment to the Constitution of the United States.

In my opinion it was the purpose of the 1950 amendment to Article 5248 to authorize taxation of leasehold estates in federally owned lands to lessees. On this point I agree with the majority opinion and disagree with the dissenting

opinion filed by Justice Garwood. True, the amendment provision is not placed in the Taxation Title of our statutes and does not *specifically* provide that federally owned lands used for private business shall be taxed to the *user*, but I think it the clear purport and intendment of the amendment that it be so taxed.

State statutes do not ordinarily *levy* ad valorem taxes; they only *authorize* the levy of ad valorem taxes by state and local taxing agencies. The amendment to Art. 5248 is sufficient for that purpose. Moreover, the Legislature could hardly have intended by the amendment that taxes would be assessed to the United States, as owner, for it had been held in *McCulloch v. Maryland*, 4 Wheat. 316, 4 [fol. 625] L. Ed. 579, that local taxes could not be imposed on property of the United States without consent of Congress, and Public Law 364 did not provide that they could. It seems to me, therefore, that the amendment to Article 5248, reasonably interpreted, purports to authorize taxation of leasehold estates in federally owned lands. In the latter respect it can be said that the amendment meets enumerated holdings 2 and 4 of *Daugherty v. Thompson*.

The majority have held that the amendment to Article 5248 authorizes taxation of leasehold estates in federally owned lands to lessees *as though they are the owners* of the land, and, thus holding, have upheld the validity of the amendment against the claim that it is unjustly discriminatory. I do not agree with either of those conclusions. They have been reached without reference to enumerated holding Number 5 of *Daugherty v. Thompson*, without overruling either that holding or *Trammell v. Faught*, and without examination of the discriminatory features of the amendment.

Enumerated holding Number 6 in *Daugherty v. Thompson* is that Article 7173 (4691) is the "only law providing that the lessee shall pay taxes on leased property." That article provided then and provides now for taxation of leasehold estates in exempt property *only* when the lease is "for a term of three years or more." There is no statute authorizing taxation of leasehold estates in exempt property owned privately or by the State or its subdivisions when the lease is for a term of *less* than three years. The

amendment to Article 5248, considered alone and apart, purports to authorize taxation of leasehold estates in federally owned property *even though the lease be for a term of less than three years*. If that be the proper construction of the amendment, it is quite obviously discriminatory against lessees of federally owned exempt property. I know of no sound basis for such discrimination.

A better construction of the amendment to Article 5248 is to say that it must be read in connection with and is controlled by the provisions of Article 7173. Under that [fol. 626] construction, we can say that leasehold estates in federally owned property are taxable, but *only* when the lease is "for a term of three years or more." That construction will obviate a holding that the amendment is *per se* discriminatory.

That brings us to the question of whether Phillips' lease is "for a term of three years or more." The lease gives an absolute right of cancellation in the event of sale of the property. In that respect it is identical with the lease in *Trammel v. Faught*. Unless *Trammel v. Faught* be overruled—and the majority opinion does not suggest that it should be overruled—we must hold that Phillips' lease is *not* one "for a term of three years or more." So holding, we must then hold that the amendment to Article 5248, as qualified by Art. 7173 and enumerated holding Number 5 in *Daugherty v. Thompson*, does not authorize taxation to Phillips of its leasehold estate in Cactus Ordinance (sic) Works on any basis.

Even if *Trammel v. Faught* should be overruled and it should now be held that leases of the type considered in *Trammel v. Faught* and held by Phillips are leases for the full term stipulated subject to a conditional limitation, I yet could not agree with the majority's holding that the property should be taxed to Phillips as though it were the owner of the fee. Here again the majority holding runs squarely into the equal protection clauses of our Constitutions.

Under enumerated holding Number 5 in *Daugherty v. Thompson* it is expressly held, with respect to leasehold estates "for a term of three years or more" made taxable by Article 7173, "that it was the intention of the legislature

only to impose on the lessee a tax based on the value of the 'taxable leasehold estate,' and not impose upon him a tax based on a sum equal to the full value of the real estate." I can conceive of no sound basis for saying that that holding will apply to leasehold estates in state owned and privately owned exempt property when the lease is "for a term of three years or more" but will not apply to leasehold estates in federally owned property. The holding of the majority, without overruling enumerated holding Number 5 of *Daugherty v. Thompson*, obviously results in unjust discrimination against lessees of federally owned property.

The majority seek to justify their holding that a leasehold estate in federally owned land may be taxed on the full value of the fee by referring to the adoption of Section 6a of Article 7 of the Constitution, the enactment of Articles 7150a and 7150c, certain provisions of Article 7150, and the series of cases recently decided by the Supreme Court of the United States. I respectfully suggest that none of the matters to which reference is made avoid or justify the discrimination which results from the majority's holding.

As heretofore noted, adoption of Section 6a of Article 7 of the State Constitution and the enactment of Article 7150a only withdrew the exemption from taxation theretofore accorded county owned school lands. I find no provision in either of those enactments which permits taxation of leasehold estates in such lands. On the contrary, Article 7150a specifically provides that the counties shall themselves pay taxes levied against such lands. Under enumerated holding Number 2 of *Daugherty v. Thompson* leasehold estates in such lands may *not* be taxed until the legislature so provides. The same may be said with respect to Article 7150c enacted in 1931. That Article authorizes payment by the State of local taxes on lands set apart for endowment of the University of Texas. It does not provide for taxation of leasehold estates in such lands.

The specific provisions in Article 7150, referred to by the majority as indicating that property there listed as exempt will not be exempt if it is "leased or otherwise used for profit", are the identical provisions which were in the

early counterpart of Article 7150 (4673) and were said by this Court in *Daugherty v. Thompson* *not* to authorize taxation of leasehold estates in the property. See 9 S.W. [fol. 628] 100, 101. Surely those provisions have no stronger force now than they had then.

The decisions of the Supreme Court of Michigan in *United States of America and Borg-Warner Corp. v. City of Detroit*, 345 Mich. 601, 77 N.W.2d 79, and *Township of Muskegon v. Continental Motors Corp.*, 346 Mich. 218, 77 N.W.2d 799, and the decisions of the Supreme Court of the United States in the same cases (see 352 U.S. 963, 78 S. Ct. 474, 2 L. Ed.2d 424 and 352 U.S. 962, 78 S. Ct. 483, 2 L. Ed.2d 436) are not in point and cannot be made controlling on the question at issue in this case. The principal reason they are not in point is because of the vast difference between Michigan and Texas statutory provisions governing taxation of leasehold estates.

The portion of Michigan Public Act 189 quoted in the majority opinion shows clearly that "it authorizes taxation of leasehold estates of *whatever duration* in *all* exempt property to the lessees as though they were the owners of the property. Our statute, interpreted in the light of *Trammell v. Faught* and *Daugherty v. Thompson*, authorizes taxation of leasehold estates *only* in federally owned property, *only* when the lease is "for a term of three or more years" and *only* on the fair market value of the leasehold estate. Obviously we are not dealing with the same problem that was before the Supreme Court of Michigan and the Supreme Court of the United States in the cited cases.

The Supreme Court of the United States made clear in the *Borg-Warner* case that local taxing units would not be permitted to assess and collect discriminatory taxes from lessees of federally owned property, when it said:

"It still remains true, as it has from the beginning, that a tax may be invalid even though it does not fall directly on the United States if it operates so as to discriminate against the Government or those with whom it deals. Cf. *McCulloch v. Maryland*, 4 Wheat. 316. But here the tax applies to every private

party who uses exempt property in Michigan in connection with a business conducted for private gain. Under Michigan law this means persons who use property owned by the Federal Government, the State, its political subdivisions, churches, charitable organizations [fol. 629] and a great host of other entities. * * Nor is there any showing that the tax is in fact administered to discriminate against those using federal property. To the contrary undisputed evidence introduced by appellees demonstrates that lessees of other exempt property have also been taxed."

In Texas, under existing law, there is no authority for taxing leasehold estates created by leases for a term of less than three years in either non-exempt or exempt property, and leasehold estates in exempt property owned either privately or by the state and its subdivisions created by leases for a term of three years or more may only be taxed on their fair market value. And yet the majority hold in this case that leasehold estates in federal property created by leases for a term of less than three years may be taxed and that they may be taxed on the full value of the fee.

I conclude: 1. That the amendment to Article 5248 authorizes taxation of leasehold estates in federally owned property. 2. That the amendment to Article 5248 is discriminatory and unconstitutional unless it be construed to apply only to leasehold estates of three or more years duration. 3. That the amendment may properly be held to apply only to leasehold estates of three or more years duration. 4. That the amendment is still discriminatory and unconstitutional if it be construed to authorize taxation of leasehold estates to lessees as owners. 5. That the amendment may properly be construed to authorize taxation of leasehold estates of a duration of three or more years at their fair market value. 6. That unless and until *Trammell v. Faught* is overruled, Phillips' leasehold estate in Cactus Ordnance Works is for a term of less than three years. 7. That Phillips' leasehold estate is not subject to taxation, and the taxes levied on such estate by Dumas Independent School District may not

be sustained. 8. That the judgments of the trial court and of the Court of Civil Appeals should therefore be reversed and judgment be rendered in favor of Phillips. 9. That Phillips' leasehold estate may be taxed only by [fol. 630] overruling *Trammell v. Faught*, and then may be taxed on the full value of the fee only by overruling certain of the holdings in *Daugherty v. Thompson*.

Unless the mentioned holdings in *Daugherty v. Thompson* are overruled, I agree with the majority's holding that there is no statutory authority for taxation of Phillips' leasehold estate prior to the date of the amendment to Article 5248 in 1950.

Robert W. Calvert, Associate Justice.

RWC:W

Opinion delivered: Jun 18 1958.

Associate Justice Walker joins in this dissent.

[fol. 631]

IN THE SUPREME COURT OF TEXAS

No. A-6639

From Moore County, Seventh District.

PHILLIPS CHEMICAL COMPANY,

VS.

DUMAS INDEPENDENT SCHOOL DISTRICT.

JUDGMENT—June 18, 1958

This cause came on to be heard on writs of error to the Court of Civil Appeals for the Seventh Supreme Judicial District, and the original transcript and the transcript showing the proceedings in the Court of Civil Appeals having been duly considered, because it is the opinion of the Court that there was no error in the judg

ment of the Court of Civil Appeals, which affirmed judgment of the District Court, it is therefore *adjudged, ordered and decreed* that the judgments of the Court of Civil Appeals and District Court be, and hereby are, in all things affirmed; that petitioner respondent, Phillips Chemical Company, and its surety, United States Fidelity and Guaranty Company, pay all costs by it expended and incurred in this Court and the Court of Civil Appeals; that respondent-petitioner, Dumas Independent School District, pay all costs by it expended and incurred in this Court, and that this decision be certified to the District Court of Moore County, Texas, for observance.

[fol. 632]

~~MOTION FOR REHEARING—CAUSE~~

A 6639

No. A-6639

IN THE SUPREME COURT OF TEXAS

PHILLIPS CHEMICAL COMPANY, Petitioner,

v.

DUMAS INDEPENDENT SCHOOL DISTRICT, Respondent.

MOTION FOR REHEARING—Filed July 3, 1958

[Omitted in printing]

[fol. 660]

RESPONDENT'S REPLY TO PETITIONER'S MOTION FOR REHEARING

[Omitted in printing]

[fol. 680]

IN THE SUPREME COURT OF TEXAS
 From Moore County, Seventh District.

[Title omitted]

ORDER OVERRULING MOTION FOR REHEARING—
 October 22, 1958

This day came on to be heard motion of Phillips Chemical Company for rehearing in the above numbered and styled cause, and, after due consideration, it is ordered that said motion be, and hereby is, overruled.

[fol. 681]

No. A-6639

IN THE SUPREME COURT OF TEXAS

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
 UNITED STATES—Filed January 15, 1959

I.

Notice is hereby given that Phillips Chemical Company, the Petitioner named above, hereby appeals to the Supreme Court of the United States from that part of the final Judgment of the Supreme Court of Texas entered on June 18, 1958, affirming judgments of the Court of Civil Appeals for the Seventh Supreme Judicial District, and of the Sixty-Ninth District Court of Moore County, Texas, which pertains to the period, March 17, 1950, through the tax year 1954, and denied the relief sought by Petitioner for such period (permanent injunction against taxation and cancellation of tax assessments for Federally-owned Cactus Ordnance Works). Petitioner's Motion for Rehearing of the final Judgment of the Supreme Court of Texas was overruled October 22, 1958.

This appeal is taken pursuant to 28 U.S.C., Section 1257 (2), Act of June 25, 1948, c. 646, 62 Stat. 929.

II.

The clerk will please prepare and certify a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

A. From the proceedings in the District Court of Moore County, Texas, Sixty-Ninth Judicial District, Case No. 2708-A:

1. Judgment of the Court.
2. Plaintiff's First Amended Original Petition.
- [fol. 682] 3. Defendant's First Amended Original Answer and Cross Action.
4. Order on Plaintiff's Motion for Separate Trial entered on September 18, 1956.
5. Correction Order dated November 12, 1956.
6. Plaintiff's Request for Admissions.
7. Defendant's Reply to Request for Admissions.
8. All of the Statement of Facts in said case, except that part starting with the first question on page 197 of the Statement of Facts, down to "witness excused," on page 347, it being intended hereby that the matter between the indicated points on pages 197 and 347 be omitted, and that the balance of the Statement of Facts be included.

B. From the Court of Civil Appeals for the Seventh Supreme Judicial District of Texas, Sitting at Amarillo, Texas, Case No. 6697:

1. The Opinion and the Judgment dated September 30, 1957.
2. The Motion for Rehearing of Appellant, Phillips Chemical Company.
3. The Opinion and the Order of the Court on Motions for Rehearing, dated November 4, 1957.

C. Proceedings in the Supreme Court of Texas, Case No. A-6639:

1. Opinion of the Court and Dissenting Opinions handed down on June 18, 1958.
2. Judgment.
3. The Application for Writ of Error of Petitioner, Phillips Chemical Company.
4. The Motion for Rehearing of Phillips Chemical Company.
5. The Order of the Supreme Court of Texas, Overruling Motion for Rehearing, entered on October 22, 1958.
6. This Notice of Appeal.
7. Any additional stipulation or designation of matter to be included in the transcript.

[fol. 683]

III.

The following questions are presented by this appeal.

The Supreme Court of Texas has held that Respondent, Dumas Independent School District, may tax Petitioner, the lessee of Federally-owned property known as Cactus Ordnance Works, for the full fee value of such property under the authority of Article 5248, Revised Civil Statutes of Texas, as amended by an Act of the Legislature of Texas (Texas Session Laws 1950, Fifty-First Legislature, First Called Session, Chap. 37, page 105), effective March 17, 1950. This Amendment to Article 5248 made Federally-owned property located in the State of Texas, if used or occupied by a lessee or user for a private purpose, subject to taxation at its full fee value against said user or occupier thereof. The Statute covers and affects only Federally-owned property. Such Statute, when implemented (as it must be in order to achieve any effectiveness at all) by the framework of the State ad valorem tax provisions (Title 122, Revised Civil Statutes of Texas), applies in each tax year to any lessee or user of Federally-owned property who uses and occupies the property on

January 1 of the tax year, regardless of whether the right of use and occupancy be for one day or for ninety-nine years. At the same time, there are no comparable taxing statutes in Texas applicable to the property of the State and its political subdivisions, or to the lessees or users thereof. Such property, at its full fee value, is in no instance taxable to the lessee or user thereof. Leaseholds in such property, if for an absolute term of three years or more, are subject to taxation to the lessees, but then only upon the value of the leasehold, as distinguished from the full fee value of the property itself. In other words, if Phillips Chemical Company held the very same lease on State property, it would, under Texas law, not be liable for any taxes whatever by reason thereof, either directly or indirectly, but solely because of Federal ownership of the property, it is, under said Article 5248, as amended, made liable for taxes based on the full fee value of the property. Under Texas law, in no instance is the lessee or user of non-Federal property, that is, the lessee or user of property of the State, cities, counties, school districts, religious and charitable organizations, or other exempt owners, made liable for taxes based on the [fol. 684] full fee value of the property. The specific questions presented by this appeal are:

(1) Is Article 5248, Revised Civil Statutes of Texas, as amended by an Act of the Legislature of Texas (Texas Session Laws 1950, Fifty-First Legislature, First Called Session, Chap. 37, page 105), effective March 17, 1950, which undertakes to impose a substantial tax burden on lessees or users of property owned by the United States, while at the same time, the State laws impose either no tax burden or a substantially less tax burden on lessees or users of State-owned property and other exempt property, void as discriminating against the United States and those with whom it deals and as imposing an unconstitutional burden on the activities of the Federal Government and infringing its sovereignty?

(2) Is Article 5248, Revised Civil Statutes of Texas, as amended by an Act of the Legislature of Texas

(Texas Session Laws 1950, Fifty-First Legislature, First Called Session, Chap. 37, page 105), effective March 17, 1950, void and unconstitutional under the Fourteenth Amendment to the United States Constitution, as constituting discriminatory, arbitrary class legislation and as denying the Petitioner, Phillips Chemical Company, the due process and equal protection of the laws?

(3) Is Article 5248, Revised Civil Statutes of Texas, as amended by an Act of the Legislature of Texas (Texas Session Laws 1950, Fifty-First Legislature, First Called Session, Chap. 37, page 105), effective March 17, 1950, violative of the United States Constitution as taxing to Petitioner, Phillips Chemical Company, property of the United States of America which is exempt from taxation?

Rayburn L. Foster, Harry D. Turner, Bartlesville, Oklahoma; C. J. Roberts, Thomas M. Blume, C. Rex Boyd, 501 First National Bank Building, P. O. Box 1751, Amarillo, Texas, Attorneys for Petitioner, Phillips Chemical Company.

Thomas M. Blume, Of Counsel.

[fol. 685] Affidavit of Service (omitted in printing).

[fol. 686] *See Exhibit 1*
[File endorsement omitted]

[Title omitted]

DESIGNATION OF ADDITIONAL PORTIONS OF RECORD ON APPEAL Filed January 27, 1959

To the Clerk of the Supreme Court of Texas:

Pursuant to Rule 12 (1) of the Revised Rules of the Supreme Court of the United States, Dumas Independent School District, Appellee, hereby designates the following to be added to the transcript of record in the above en-

titled cause to be filed in the Supreme Court of the United States pursuant to a Notice of Appeal filed herein.

1. The Reply of the Appellee, Dumas Independent School District, to the Motion for Rehearing of Appellant, Phillips Chemical Company, from the Court of Civil Appeals for the Seventh Supreme Judicial District of Texas at Amarillo in Cause No. 6697.

2. The Reply of the Respondent, Dumas Independent School District, to the Application for Writ of Error of Petitioner, Phillips Chemical Company, in the Supreme Court of Texas; Cause No. A-6639.

3. The Reply of the Respondent, Dumas Independent School District, to the Motion for Rehearing of Petitioner, Phillips Chemical Company, in the Supreme Court of Texas, Cause No. A-6639.

Respectfully submitted

[fol. 687] James W. Witherspoon, John D. Aikin,
Wayne E. Thomas, Earnest L. Langley, P.O. Box
473, Hereford, Texas, Attorneys for Respondent,
Dumas Independent School District.

James W. Witherspoon, Of Counsel.

Affidavit of Service (omitted in printing).

[fol. 688] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 689]

SUPREME COURT OF THE UNITED STATES

No. 769—October Term, 1958.

PHILLIPS CHEMICAL CO., Appellant,

vs.

DUMAS INDEPENDENT SCHOOL DISTRICT.

Appeal from the Supreme Court of the State of Texas.

ORDER NOTING PROBABLE JURISDICTION May 18, 1959

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The Solicitor General is invited to file a brief setting forth the views of the United States.

May 18, 1959.